

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

ENR-T-11-01

FROM: WELDON STUTZMAN
DEPUTY ATTORNEY GENERAL

DATE: FEBRUARY 18, 2011

SUBJECT: INVESTIGATION OF AN APPROPRIATE CERTIFICATION PROCESS
FOR COMPETITIVE LOCAL EXCHANGE CARRIERS

On August 27, 2010, the Commission issued Order No. 32059 in Case No. TIM-T-08-01. The Order denied a request by Time Warner Cable Information Services (Idaho), LLC for a Certificate of Public Convenience and Necessity (CPCN) authorizing it to provide telecommunications service in Idaho. The Commission denied Time Warner's request for a CPCN because the Company was not planning to offer "basic local exchange service" as defined in Title 61, Idaho Code. The Commission stated in the Order that it no longer issues CPCNs to telephone corporations under *Idaho Code* § 61-625, and instead it "registers" new competitive local exchange carriers (CLECs) by issuing a "Certificate" under Commission Rule 114, IDAPA 31.01.01.114. Order No. 32059, p. 7. The Commission stated it used the certification process to register and review applicants to provide telecommunications services pursuant to Rule 114. *Id.*

Evidence in the Time Warner case indicated the Commission previously issued CPCNs under Title 62, Idaho Code, to at least two other wholesale telecommunications providers. The Commission stated in its Order that, inasmuch as it may have previously issued Title 62 CPCNs to wholesale providers who do not offer basic local exchange services, "the Commission is committed to appropriately addressing the matter through an investigatory process to verify that recipients of CPCNs are actually providing basic local exchange service to customers in Idaho." Order No. 32059, p. 11. The Commission further stated that it "is taking appropriate steps to verify that Title 62 Certificates are issued to carriers providing basic local

exchange service,” and that the Commission “intends to investigate all holders of Title 62 CPCNs to ensure they are providing basic local service.” Order No. 32059, p. 12.

In response to the Commission’s directive in Order No. 32059, the Commission Staff began requesting information of all Idaho CLECs. The Staff’s first request, dated July 20, 2010, requested information regarding the current count of access lines provided by each company to residential customers in Idaho and to small business customers. Staff also requested information regarding the current number of all other access lines used by the company to provide service to other than residential or small business customers. Staff sent a similar second request on October 1, 2010. Armed with the information obtained through the first two requests, Staff sent a third letter to Idaho CLECs on November 9, 2010. Referencing the Commission’s instructions in Order No. 32059, Staff notified CLECs that currently hold a CPCN but do not provide basic local exchange service that the Commission might consider rescinding the company’s CPCN. Staff asked that, “if it is correct that [company] is not currently providing basic local exchange service in Idaho, please indicate in a letter to the Commission Secretary whether [company] voluntarily relinquishes its CPCN or whether the company has any objections to the Commission’s rescission of [company]’s Certificate.” A copy of the Staff’s November 9, 2010, letter is attached to this Memorandum.

In response to Staff’s correspondence, eight CLECs agreed to the rescission of their Certificates. However, more than twice that number strongly objected to possible relinquishment of their CPCN. Several CLECs provided specific information regarding their need for a CPCN from the Commission. For example, 360networks (USA), Inc. stated:

In order to enter into its Interconnection Agreements with Qwest, Verizon and CenturyTel, 360networks was required by the incumbents to provide a Certificate of authority from the Idaho Commission enabling 360networks to do business as a competitive local exchange carrier (CLEC) in the state. An Idaho specific CLEC certificate was also required for 360networks to obtain company codes that allow it to exchange information with other telecommunications providers for the proper routing and rating of telecommunications traffic transmitted between 360networks and the rest of the industry. Furthermore, 360networks would not have been able to obtain numbering resources in Idaho if it had not obtained written authorization from the Idaho Commission to provide local services here. The certification must remain in effect for 360networks to continue to enjoy these CLEC privileges.

Objection and explanation was also provided by Qwest Communications Company LLC (QCC). QCC stated that its

Primary concern about maintaining its CPCN is based on the realities of the marketplace. Revoking QCC's CPCN could harm QCC as a competitor and could harm competition in, and outside, Idaho. If the QCC CPCN is revoked QCC could be deemed no longer in compliance with the Networx contract requirements, which could trigger action by the government services administration to find QCC in default and terminate the contract. If that were to occur, it would affect QCC's ability to compete for federal government business not only in Idaho but nationwide. Furthermore, if QCC's Networx contract were terminated, the total number of telecommunications providers under Networx would be reduced from three to two for all services, not just basic local exchange service.

As part of its response, 360networks suggested that "rather than revoking a company's certificate, the Commission consider offering a separate certification for those carriers that do not provide 'retail basic local exchange' under state law but provide or offer to provider other local exchange and exchange access service in Idaho under the federal act."

360networks explained that

A gap exists today between the application of Idaho law and the implementing rules relating to rights of CLECs under Sections 251 and 252 of the Telecommunications Act of 1996. As the Commission acknowledges, the definition of a 'local exchange carrier' entitled to Section 251 and 252 rights is broader than Idaho state law's definition of the providers of 'basic local exchange service.' Under the Act, even those providers seeking to provide only wholesale telecommunications services are entitled to interconnection and other rights of local exchange carriers. In Idaho, however, only 'basic local exchange carriers' obtain a 'Certificate' from the Commission. Processes relating to the federal Act such as those noted above (interconnection, numbers, company codes) require some sort of 'certification' from the Idaho Commission authorizing the CLECs to provide local telecommunications services here. Without it, a CLEC is prevented from entering the Idaho local exchange market. 360networks recommends that the Commission close that gap and provide a written certification that evidences a CLEC's ability to provide local telecommunications services in Idaho under the federal Act. [footnote omitted.]

360networks suggested the Commission provide a sort of "written certification" or "order in lieu of certificate," rather than a CPCN, to solve the problem of CLECs that need Commission approval but do not provide basic local exchange service.

In light of the responses received from Staff's inquiry into access line use by CLECs, Staff recommends the Commission take no further action to revoke CPCNs and instead open a docket to investigate whether some sort of certification process is appropriate for Title 62 telecommunications providers in Idaho, as recommended by 360networks. Notice of the investigation should set forth questions for interested parties to address in written comments as follows:

1. Is a certification by the Commission necessary for companies providing telecommunications services but not basic local exchange service?
2. If some sort of Commission certification is needed, what form or designation might it take?
3. What legal authority does the Commission have to issue certification that is not a Certificate of Public Convenience and Necessity?
4. What can the Commission do to ensure numbers are used efficiently by CLECs and other telecommunications providers?

COMMISSION DECISION

Should the Commission open a docket to investigate whether some sort of certification process is appropriate for Title 62 telecommunications providers in Idaho that do not provide basic local exchange service?



Weldon B. Stutzman
Deputy Attorney General

bls/M:CLEC Certification_ws

November 9, 2010

Dear [telecommunications company]:

Previously [company name] requested and obtained a Certificate of Public Convenience and Necessity (CPCN or Certificate) from the Idaho Public Utilities Commission. The Commission issues CPCNs to competitive local exchange carriers (CLECs) seeking to provide local exchange services in Idaho pursuant to Title 62, Idaho Code. A Title 62 CPCN obtained by a CLEC does not confer a right to a specific service territory, and instead is the process used by the Commission "to register and review applications to provide local telecommunication services." IDAPA 31.01.01.114.

It came to the Commission's attention in a recent case that it may have issued Certificates to companies that are not providing local telecommunications services. Specifically, the Commission noted that at least two Certificates may have been issued "to wholesale telecommunications providers that may not currently offer basic local exchange services in Idaho." The Commission stated its commitment to "appropriately addressing the matter through an investigatory process to verify that recipients of CPCNs are actually providing basic local exchange service to customers in Idaho." Order No. 32059, Case No. TIM-T-08-01, issued August 27, 2010, p. 11. The Commission reiterated its intention "to investigate all holders of Title 62 CPCNs to ensure they are providing basic local service." *Id.*, p. 12.

Pursuant to the Commission's directive in Order No. 32059, Commission Staff obtained information from CLECs that currently have a CPCN issued by the Commission. Based on the information it received, Staff believes [company name] currently holds a Certificate issued by the Commission, and does not currently provide basic local exchange service in Idaho. If you believe this information is incorrect, please immediately provide information to verify that [company] is providing basic local exchange service in Idaho.

If it is correct that [company] is not currently providing basic local exchange service in Idaho, please indicate in a letter to the Commission Secretary whether [company] voluntarily relinquishes its CPCN, or whether the company has any objections to the Commission's rescission of [company]'s Certificate. Where appropriate, Commission Staff will ask the Commission to initiate a formal process to rescind CPCNs issued to companies not currently providing basic local exchange service in Idaho. Because a Certificate relates to local basic

telecommunications service, revocation does not affect a company's ability to perform its non-retail business activities.

Please respond to this letter by November 29, 2010. Thank you for your prompt attention to this request.

Sincerely,

Carolee Hall
Telecom Analyst

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