

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF AN INVESTIGATION )**  
**OF AN APPROPRIATE CERTIFICATION ) CASE NO. GNR-T-11-01**  
**PROCESS FOR TELECOMMUNICATIONS )**  
**COMPANIES THAT DO NOT PROVIDE ) ORDER NO. 32277**  
**BASIC LOCAL EXCHANGE SERVICE )**

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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) that would authorize it to provide telecommunications service in Idaho 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* § 61-526, 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 Case No. TIM-T-08-01 indicated the Commission may have issued CPCNs under Title 62, Idaho Code, to other wholesale telecommunications providers. The Commission stated in its Order that, inasmuch as it may have previously issued CPCNs to companies 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 requested information of all Idaho CLECs regarding the current count of access lines provided by each company to residential customers in Idaho and to small business customers. Based on the information provided, and 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. Responses to Staff's request were sent to the Commission Secretary.

In response to Staff's correspondence, some companies objected to possible relinquishment of their CPCN. Several companies provided specific information regarding their need for a CPCN from the Commission. As part of its response, one company 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 provide other local exchange and exchange access service in Idaho under the federal act." The company 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.

The company recommended 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, the Commission opened a docket to investigate whether some sort of certification process is appropriate for Title 62 telecommunications providers that do not provide basic local exchange service. The Commission issued a Notice of Investigation and solicited written comments addressing the need or purpose of a certification for telecommunications companies that provide services other than basic local exchange service. The Commission asked that written comments address the following questions:

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?

Order No. 32194.

### **WRITTEN COMMENTS**

Written comments were filed by Qwest Communications Company, LLC (QCC); 360networks (USA), Inc. (360networks); AT&T Communications of the Mountain States, Inc. (AT&T); Time Warner Cable Information Services (Idaho), LLC dba Time Warner Cable (Time Warner); and the Commission Staff. QCC and AT&T also filed reply comments.

All of the commenting parties recommended the Commission adopt a certification or registration process for wholesale telecommunications providers to be recognized as eligible to provide services in Idaho. AT&T suggested the Commission adopt a registration process for providers of service that do not meet the definition of basic local service and issue a registration number to a company that files basic information with the Commission, such as company name, business address, description of telecommunications services offered and the area to be served. AT&T stated it does not believe a CPCN or a registration number is required to obtain telephone numbers or an interconnection agreement, but that a registration process would nonetheless facilitate those processes. In addition, a registration number issued by the Commission would provide evidence to NeuStar, which oversees the allocation of numbering resources, that the company is authorized to provide service in an area. AT&T Comments, p. 3. In its reply comments, AT&T noted that all the commenters recommend that the Commission adopt a process for a company that does not offer basic local exchange service to obtain Commission recognition that the company is authorized to enter the local markets in Idaho. This recognition by the Commission would enable the company to more easily obtain access to numbering resources and interconnection agreements. AT&T Reply Comments, p. 2. AT&T was the only commenter to suggest that the Commission issue a registration number to demonstrate that the

company is authorized to offer service in the state. In its reply comments, AT&T stated that if the Commission determines that the registration process it suggested is not sufficient, AT&T does not oppose the use of an Order in lieu of Certificate as suggested by other parties. If that process is used, AT&T suggested that a company requesting an Order in lieu of Certificate should not be required to provide as detailed information as those companies that require a CPCN, and the Commission should specify in advance the precise information that is required for an Order in lieu of Certificate so that an Order can be granted expeditiously. AT&T Reply Comments, pp. 2-3.

360networks in its comments addresses each of the questions identified by the Commission. 360networks contends that Commission certification is required for a company to obtain interconnection agreements with Qwest Corporation, Verizon, and CenturyTel. In addition, 360networks asserts “an Idaho specific CLEC certification is also required for a CLEC 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 it and the rest of the industry.” 360networks Comments, p. 2. 360networks further asserts that a CLEC is not able to obtain numbering resources in Idaho if it does not obtain written authorization from the Commission to provide local services in the state. 360networks contends evidence of state authorization is required for a company to exercise its rights under Section 251 of the federal Act to provide service in a state. As to a form of certification, 360networks points to the solution determined by the Iowa Commission “to close the gap between state and federal law and to allow competitive local telecommunications service providers seeking to provide services in Iowa to exercise their 251 and 252 rights.” 360networks Comments, p. 3. The Order in lieu of Certificate process adopted by the Iowa Commission is “used by those local exchange carriers that do not meet the state CPCN requirement but enables the providers to exercise rights, privileges and obligations under the federal Act.” 360networks Comments, p. 3.

Regarding the Commission’s legal authority to issue certification that is not a CPCN, 360networks discussed *Idaho Code* § 62-615 that grants to the Commission full power and authority to implement the federal Telecommunications Act of 1996, and to adopt rules and procedures necessary to carry out the duties authorized or required by the Act. 360networks Comments, p. 4. 360networks contends the Commission may use this authority to adopt a process to issue a written Certificate to a wholesale provider of telecommunications services

wishing to operate in the state. Regarding the efficient use and preservation of telephone numbers, 360networks contends that no change to existing practice is required because wholesale telecommunications providers have the same obligations as retail telecommunications providers under federal regulations when obtaining numbers from the North American Numbering Administrator (NANPA).

QCC also responded to the four questions identified by the Commission. QCC distinguished itself from the other commenters by noting that it has a CPCN issued by the Commission, although it does not currently provide basic local exchange service. QCC asserts that providing basic local exchange service is one of its business objectives and QCC holds itself out as willing to provide that service. QCC Comments, p. 3. QCC also notes that its Networx Universal contract with the federal government requires that it file all tariffs and make other regulatory filings in any state in which the federal agency might operate. QCC thus believes the contract language implicitly requires it to hold a CPCN for Idaho. QCC asserts that if the Commission were to withdraw its CPCN it could be deemed out of compliance with its Networx contract requirements.

If the Commission were to adopt some sort of certification process for wholesale providers, QCC asserts that that certification must allow the company to file and maintain tariffs and price lists that describe the services it offers, and must allow for a simple and self-executing conversion to a full CPCN once a customer order for local service is received. QCC Comments, p. 6. As did the other commenters, QCC points to the Commission's authority in *Idaho Code* § 62-615 to fully implement the federal Telecommunications Act as authority to approve an alternative certification process.

Regarding efficient use of telephone numbers, QCC points to the existing requirements, including mandatory number pooling for all rate centers and area code relief in the form of an overlay, as key factors in number conservation and effective use of NANPA resources. QCC Comments, p. 7. QCC notes that the historical system of certifying CLECs is an effective means of securing compliance with these measures and that if the Commission adopts an alternative form of certification for entities not providing basic local exchange service, the Commission should include such compliance as part of the qualifications for that certification. In its reply comments, QCC stated its support of Staff's recommendation that the Commission not revoke CPCNs already provided to companies that may not currently be

providing basic local exchange service. QCC also clarified that Qwest Corporation does not require CLECs to obtain a Commission-issued CPCN prior to negotiating an interconnection agreement. Although Qwest Corporation's website does recommend a CLEC obtain certification as a telecommunications provider enabling it to do business, QCC maintains that the language does not create a condition precedent to negotiations of an interconnection agreement with Qwest Corporation.

In its written comments, Time Warner stated that "certification or some sort of similar grant of authority by the Commission is critical to enable a competitive service provider to obtain interconnection and other necessary inputs, as these inputs typically will not be provided unless evidence of such certification can be furnished." Time Warner Comments, p. 2. Time Warner asserts that state certification "facilitates the ability of service providers to obtain interconnection, numbering resources, operating company numbers (OCNs), and other resources necessary to route calls via the PSTN [public switch telecommunications network]." Time Warner Comments, p. 3. Time Warner contends the National Exchange Carrier Association (NECA) requires that a service provider furnish evidence of operating authority before it will assign an OCN to the entity, and that a company without an OCN will not be listed in the local exchange routing guide, effectively precluding it from routing calls and paying and collecting access charges for the traffic it carries. In addition to the authority granted the Commission under *Idaho Code* § 62-615, Time Warner points to the Commission's authority under Section 61-501 to do all things necessary to carry out the spirit and intent of the provisions of Title 61 and 62. *Idaho Code* § 62-602 establishes "the legislature's intent in adopting Title 62 to encourage effective competition and to give the Commission authority to empower competitive providers to enter local markets in Idaho." Time Warner Comments, p. 5. Time Warner contends that the Idaho Code does not require the Commission to adopt a particular form or designation, and that whatever mechanism the Commission chooses it must be effective in facilitating the ability of providers to enter the Idaho markets. Time Warner suggests the Commission establish a new form of CPCN for providers of non-basic local exchange service or alternatively, the Commission could issue a written Order in lieu of certification. Time Warner Comments, pp. 6-7. Regarding preservation of telephone numbers, Time Warner asserts the alternate certification process should not result in any need for the Commission to supplement its existing mechanisms to ensure that telephone numbers are used efficiently.

Staff in its comments summarized its experience in notifying companies that the Commission may revoke CPCNs issued to companies that do not provide basic local exchange service. The companies that objected to possible relinquishment of their CPCN noted that a gap exists in the application of Idaho law and implementation of the rules relating to CLECs under Sections 251 and 252 of the federal Act. Staff Comments, p. 4. To close this gap, Staff noted that some other states, specifically Iowa and Colorado, have approved an alternative certification process for companies that do not provide basic local exchange service. The Iowa Commission issues an order in lieu of Certificate, and the Colorado Commission issues a letter of registration to these companies.

Regarding numbering resources, Staff noted that the pooling administrator at NeuStar states that a CPCN is needed in order for a company to receive numbers. Staff Comments, p. 6. NeuStar informed Staff that the Iowa Order in lieu of Certificate is recognized as sufficient for a company to obtain numbers. Staff believes because the Commission has authority to implement mandatory pooling requirements, the Commission's ability to manage numbering resources will not be compromised by a process to recognize that wholesale providers are authorized to do business in the state. Staff believes the Commission has authority under *Idaho Code* § 62-615 to establish an alternative to a CPCN for providers of non-basic local exchange service. Staff recommended the Commission implement a procedure similar to that in Iowa and issue an Order in lieu of Certificate. Staff further recommended that wholesale companies that receive numbering resources acknowledge responsibility for all reporting requirements using their own operating company number. Staff Comments, p. 8.

#### **COMMISSION DISCUSSION, FINDINGS AND CONCLUSIONS**

All of the commenting parties believe that Commission recognition of wholesale telecommunications providers will enhance or enable the companies' access to local markets and the rights and remedies set forth in Sections 251 and 252 of the federal Telecommunications Act. Some commenters differ on whether formal Commission recognition is necessary to obtain interconnection agreements, but all agree it would make access to such agreements easier. Some commenters believe Commission certification is essential for a company to acquire numbers. All parties assert that *Idaho Code* § 62-615 authorizes the Commission to adopt a process for registering wholesale providers in order to implement important provisions of the federal Telecommunications Act.

On the record in this case, the Commission finds that registration or certification of telecommunications companies that do not provide basic local exchange service, as defined by state law, is necessary to enable those companies to access important rights or privileges identified in the federal Telecommunications Act as they enter the telecommunications markets in Idaho. More specifically, Section 251 of the Act describes interconnection obligations and the means for competitive carriers to achieve interconnection with incumbent providers. Section 251(e) directs the FCC to create a numbering administrator and to make numbers available on an equitable basis. 47 U.S.C. 251(e)(1). Section 252 of the Act establishes the means for companies to obtain interconnection agreements, whether by negotiation or arbitration through a state commission. The evidence is undisputed that Commission registration or certification of wholesale providers will facilitate the companies' access to these important Sections 251 and 252 rights, remedies and processes.

The Commission's procedural rule for CPCN applications states that the certification process enables the Commission "to register and review applications to provide local telecommunications services." IDAPA 31.01.01.114. The Commission finds it appropriate to use the registration and review process described in Rule 114 to identify telecommunications providers that do not provide local exchange service, but nonetheless request Commission recognition to assist their entry into the Idaho markets. Commission registration of wholesale providers will remove impediments for these companies' entry into competitive markets in Idaho, consistent with objectives in the federal Telecommunications Act and Title 62 of the Idaho Code.

Telecommunications companies that do not intend to provide basic local exchange service but request Commission registration may file an application pursuant to Rule 114, with minor modification to eliminate information required by the Rule relating to retail basic local exchange service. Specifically, applications need not include the service and territory information described in Section 2, the financial information in Section 3, or the tariffs and price lists described in Section 4. A company that completes the application process as required in Rule 114, Section 1 and Sections 5 through 8, will be recognized by the Commission as having successfully registered as a wholesale provider of telecommunications services in Idaho. Section 8 of Rule 114 requires a commitment by companies to adhere to number pooling and reporting



requirements to assist the Commission in preserving numbers. The Commission will leave in place CPCNs already issued; this Order does not affect those Certificates.

**ORDER**

IT IS HEREBY ORDERED that a telecommunications company that does not intend to provide basic local exchange service and completes the application process as required in Commission Rule of Procedure 114, Section 1 and Sections 5 through 8, will be recognized by the Commission as having successfully registered as a wholesale provider of telecommunication services in Idaho. IDAPA 31.01.01.114.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

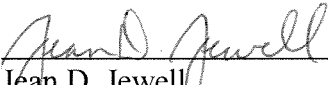
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30<sup>th</sup> day of June 2011.

  
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PAUL KJELLANDER, PRESIDENT

  
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MACK A. REDFORD, COMMISSIONER

  
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MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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