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March 28, 2011

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702-5983

RE: Docket No. GNR-T-11-01

Dear Ms. Jewell:

Enclosed for filing with this Commission are an original and seven (7) copies of the Comments of Qwest Communications Company LLC (QCC).

If you have any questions, please contact me.
Very truly yours,


Mary S. Hobson

Enclosures

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Attorneys for Qwest Communications Company LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<p>IN THE MATTER OF AN INVESTIGATION OF AN APPROPRIATE CERTIFICATION PROCESS FOR TELECOMMUNICATIONS COMPANIES THAT DO NOT PROVIDE BASIC LOCAL EXCHANGE SERVICE</p>	<p>Case No. GNR-T-11-01 COMMENTS OF QWEST COMMUNICATIONS COMPANY LLC</p>
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Qwest Communications Corporation (now Qwest Communications Company LLC) (QCC) files the following comments in response to the Idaho Public Utilities Commission's (IPUC's) Order No. 32194 dated February 25, 2011.

BACKGROUND

In September 2002, the IPUC granted QCC's request for "authorization to provide local service"¹ by approving its application for a CPCN (Certificate No. 402). In June of 2004, the

¹ Case No. QCC-T-02-01, Order No. 29099

Commission amended QCC's Certificate, allowing QCC the "authority to provide related services to customers in large business markets."² The Commission noted that "QCC may have an opportunity to provide service to large customers with remote offices that would qualify as small businesses, and the Company stated it needed flexibility to provide basic local exchange service to those customers under a single corporate entity."³ Since the entry of these orders, QCC has remained in compliance with all IPUC requirements for maintenance of its Certificate.

On July 20, 2010 the Idaho Public Utilities Commission Staff (IPUC Staff or Staff) issued an "Access Line Audit of all Idaho CLECs" asking, among other things, for "current count[s]" of certain access lines being provided by QCC to residential and business customers in Idaho. On August 16, 2010 QCC responded to the audit indicating that QCC did not currently have Idaho customers using the particular lines in question.

On November 9, 2010 QCC received a letter from Carolee Hall of the IPUC Staff inquiring whether QCC planned to voluntarily relinquish its CPCN or whether it had any objections to the Commission's rescission of QCC's Certificate, based on QCC's line counts for "basic local exchange service" in Idaho. On December 15, 2010 QCC responded to the letter of November 9 indicating QCC was not prepared to voluntarily relinquish its CPCN and requesting additional time for response. QCC completed its response by letter submitted on January 24, 2011, which outlined QCC's continued need for a CLEC CPCN.

QCC appreciates the opportunity presented by this docket to expand on its concerns and address some of the issues raised by a possible alternative approach.

DISCUSSION

Order No. 32194 set out four questions that the Commission wishes to have addressed in the comments of the interested parties. QCC responds as follows:

1. Is a written certification by the Commission necessary for companies providing telecommunications services but not basic local exchange service?

a. QCC is not similarly situated to Time Warner and other wholesale providers who have recently raised the certification issue before the IPUC.

² Case No. QCC-T-04-1, Order No. 29514, p.1

³ Id.

This first question posed by the Commission appears to address whether companies that do not provide basic local exchange service and do not intend to provide such service and/or do not hold themselves out as being willing to offer the same need some form of written certification from the Commission. QCC believes there may be others who are better-equipped to respond directly to this point given that QCC does not fit into the assumed category. QCC is not primarily a wholesale provider and its business plan contemplates providing retail local service as the IPUC's Order No. 29514 recognized in 2004. QCC urges the Commission to avoid an overly narrow focus on only a portion of the issue of certification, as this could threaten to obscure other important aspects of this case that require Commission attention.

QCC is not similarly situated to Time Warner and other wholesale providers that have recently raised certification issues before the IPUC. Although QCC does not *presently* serve any basic local exchange customers, the provision of basic local exchange services is one of its business objectives and QCC holds itself out as being willing to provide such services in QCC's Catalog on file with the IPUC.⁴ Furthermore, as QCC explained in its correspondence to the IPUC in late January, the Company's Network Universal contractual agreement with the federal government requires that QCC file all tariffs and other regulatory filings that are required by law or regulation and that are necessary for contract performance in any state in which the contracting federal agency might operate. Since contract performance may require providing local exchange service (possibly including basic local exchange service) in Idaho, the contract language implicitly requires a QCC CPCN for Idaho. As noted, this fact was recognized by the Commission in its past order expanding QCC's CPCN.⁵ That order explicitly acknowledged, QCC's need for "flexibility to provide basic local exchange service to [large business] customers under a single corporate entity."⁶ QCC still finds itself in that position and asks that the Commission continue to allow QCC to hold a CLEC CPCN, as it has since September 2002.

b. Withdrawing QCC's CPCN creates a potential competitive disadvantage for QCC and may diminish competitive alternatives.

⁴ See Section 4.3 (*Contractual Service Agreements – Federal Government Service Agreements*) of QCC's Idaho Local Exchange Services Catalog (No. 2) ("QCC LES Catalog").

⁵ See fn. 2.

⁶ See fn. 3

The Commission's possible reconsideration of its past approval of CPCNs for companies such as QCC raises serious concerns based on the realities of the marketplace. If QCC is not permitted to maintain its CLEC CPCN, it could suffer substantial harm. As noted, QCC's Networx contract requires that QCC maintain all regulatory filings necessary to provide the services contemplated under the agreement. Those services include providing basic local exchange service, which requires a CLEC CPCN. QCC has complied with all such provisions including having maintained a CLEC certificate in Idaho since 2002. If QCC were to lose its CPCN, it could be deemed out of compliance with the Networx contract requirements. Noncompliance could trigger action by the Government Services Administration to find QCC in default and to terminate the contract. If that were to occur, it would impact QCC's ability to compete for federal government business not only in Idaho but nationwide. Furthermore, competition in, and outside, Idaho could similarly be damaged by the loss of QCC and perhaps other competitors. If QCC's Networx contract were terminated, the total number of telecommunications providers under Networx would be reduced for all services, not just basic local exchange service.

QCC is uncertain what policy objectives may be achieved by restricting CLEC CPCNs in Idaho to those companies who presently have local exchange customers. However the adverse impacts of restricting an active company's ability to compete and the possible reduction of the number of viable competitors should be factored in as the Commission considers how it wishes to handle the needs of an entirely different group, i.e., companies who do not intend to provide local service and are not holding themselves out as potential competitors planning to provide local service.

2. If some sort of Commission certification is needed, what form or designation might it take?

As QCC's foregoing comments describe, QCC believes that the continuance of a CLEC CPCN is required to maintain its compliance with its Networx contract with the federal government and its competitive status as a potential service provider under that arrangement in Idaho and elsewhere. Adopting some form of alternative certification will inevitably involve difficulties that are not present under the current Commission process that has allowed QCC to hold a CPCN.

a. A two-tiered system of certification creates a regulatory bind for companies wishing to provide local service.

While the Commission's concerns about companies holding CPCNs while not actively serving basic local exchange customers are not fully developed in this record, there appears little doubt that those companies that *do* provide local service (at least those doing so by means of the public switched network) are required to maintain a certificate.⁷ Thus a company such as QCC that (potentially) does not qualify for a CPCN under some new Commission approach to the CLEC CPCN requirements is placed in a regulatory bind if it still wishes to hold itself out as a potential provider of local service. Assuming a two-tiered process under which active providers are given a CPCN and others a certificate of some other kind, once a QCC customer orders local exchange service, QCC would be forced to a change its status from a second tier certificate holder to a fully certificated CLEC. Presumably this process would need to be completed before QCC could comply with its customer's service request. Since under its Networx contract, QCC is obligated to provide local service, if requested, this scenario poses a serious question concerning QCC's ability to perform in a competitively viable way. While such a regulatory requirement may not constitute an insurmountable obstacle to providing service, it is easy to see that it could cause delay and potentially degrade QCC's response to its customer. It also involves the expenditure of time and resources by the Company and the Commission that is not now required, without an articulated policy purpose being served.

Furthermore, since under QCC's Networx agreement QCC must comply with any regulatory requirements necessary to provide contract services (which include basic local exchange service), QCC requires the ability to file and maintain tariffs/price lists reflecting that service. Presently QCC has this ability due to its CLEC CPCN. However, if QCC were to lose its CPCN, it is unclear under the Idaho regulatory regime whether the IPUC would accept tariff/price list filings for basic local exchange service where (potentially) QCC is not authorized to offer it. Restriction of QCC's ability to maintain filings that reflect its service offerings places QCC in a position of potentially violating its contractual agreement. In addition, restricting the services that a CLEC is permitted to offer in its IPUC filings solely because the CLEC has not yet captured customers seems to inappropriately limit competition while providing no offsetting gain to the public.

⁷ See IPUC Procedural Order 26665.

b. A two-tier certification process must avoid restricting competition and provide for a ready transition between levels of certification.

If the Commission were to adopt the approach that some other form of certification be offered companies that do not have active local exchange customers, that form of certification, to meet the needs of QCC, must allow the Company to file and maintain tariffs/price lists that describe the services it offers (including basic local exchange service) and must allow for a simple and self-executing conversion to a full CPCN once a customer order for local service is received. These features are necessary so that QCC's competitive position and its ability to serve customers (without commercially unreasonable delay) are not compromised by regulatory requirements for the two tier process. With such features in place, however, it becomes unclear what useful distinctions remain between the two tiers that justify their creation.

3. What legal authority does the Commission have to issue certification that is a not a Certificate of Public Convenience and Necessity?

The Idaho Legislature has created a statutory structure that delineates the IPUC's authority with regard to incumbent, rate-regulated telephone corporations in Title 61, Idaho Code. It also granted the Commission specific authority with regard to other telecommunications providers in Title 62. Competitive Local Exchange Carriers (CLECs) and telephone corporations that do not provide basic local exchange service are subject to Title 62.⁸ Among the authorities granted to the Commission in Title 62 are the broad provisions of section 62-615 which provide that the IPUC "shall have full power and authority to implement the federal telecommunications act of 1996"⁹ and that it "may promulgate rules and/or procedures necessary to carry out the duties authorized or required by the federal telecommunications act of 1996."¹⁰

QCC submits that the certification of CLECs (including those such as QCC that hold themselves as prepared to offer local service) falls within the scope of the authority contemplated by section 62-615. Indeed, the federal telecommunications act of 1996 specifically contemplates the exercise of state regulatory authority over competitive carriers in such areas as

⁸ See e.g., Idaho Code § 62-604 (a)(1)

⁹ Idaho Code § 62-615 (1)

¹⁰ Idaho Code § 62-615 (3)

“preserv[ation] and advance[ment] of universal service,” protection of the “public safety and welfare,” telecommunications service quality, and “safeguard[ing] the rights of consumers.”¹¹ The IPUC’s requirements for the issuance of CLEC CPCNs, as contained in IPUC Commission Order 26665, appear geared to address these areas of state regulatory interest.

QCC believes that the IPUC has adequate authority to issue CPCNs to non-incumbent telecommunications providers under provisions of Title 62, Idaho Code. QCC finds no basis in the statutes to limit that authority to companies that are *presently* providing basic local exchange service (or those within some initial period following certification). However, should the Commission find that an alternative form of certification for entities not actively providing local service is necessary, the above-described statutory provisions are likely adequate to authorize such certification so long as it relates to the regulatory objectives preserved for the states under the federal telecommunications act.

4. What can the Commission do to ensure that numbers are used efficiently by CLECs and other telecommunications providers?

QCC views mandatory number pooling for all Rate Centers, which is already in place in Idaho, and Area Code relief in the form of an Overlay, as key factors in number conservation and effective use of North American Numbering Plan (NANP) resources. The historical system of certifying CLECs acts as an effective means of securing compliance with these measures. If the Commission were to adopt an alternative or lesser form of certification for entities not presently providing basic local exchange service, the Commission should consider including such compliance as a part of the qualifications for such certification. However, such additions to a second form of certification once again diminish any differences between that form and the existing CPCN and again raise the question of the need for a two tier certification approach.

States have certain conservation authority, which is outlined in the Industry Numbering Committee (INC) Central Office Code Assignment Guidelines (COAG).¹² These number conservation measures include the state’s access to service providers’ applications for numbering resources (Section 2.13), and authority to investigate proof from service providers that NXX

¹¹ 47 U.S.C. § 253(b)

¹² The COAG can be found on the ATIS web site:
www.atis.org/inc/incguides.asp

codes have been activated and assignment of number has commenced (Section 8.0). The COCAG also require those carriers applying for NANP resources to (1) certify a need for NANP numbers from provision of service in the Public Switched Telephone Network (PSTN), Section 4.1.1, and (2) provide evidence of a license or authority issued by the FCC or a Certificate of Public Convenience and Necessity (CPCN), Section 4.2.1. The Commission may consider pursuing a status report from the FCC on pending waiver requests for VoIP from various service providers. Where entities that are not certified by the IPUC are obtaining numbers from companies that are so certified, the Commission may wish to consider exercising its regulatory authority over the certified companies to ensure their provision of numbers to other entities meets IPUC conservation policies.

CONCLUSION

QCC submits that the IPUC's authority granted in Title 62, Idaho Code is sufficient to permit it to issue CPCNs to companies such as QCC who offer retail local exchange service. QCC finds nothing in Idaho law that restricts CLEC CPCNs to companies presently providing basic local exchange service. If the Commission were to adopt an alternative form of certification, that certification must allow QCC to file and maintain tariffs/price lists that describe the services it offers (including basic local exchange service) and must allow for a simple and self-executing conversion to a full CPCN once a customer order for local service is received.

Dated this 28th day of March, 2011.

Respectfully submitted,



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