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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 BASIC)
LOCAL EXCHANGE SERVICE.) **COMMENTS OF THE**
) **COMMISSION STAFF**
)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, and in response to the Notice of Investigation and Notice of Modified Procedure issued in Order No. 32194 on February 25, 2011, submits the following comments.

BACKGROUND

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 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 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 that 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. Company responses were sent to Staff and the Commission Secretary.

A number of responses in favor of retaining a company’s Certificate of Public Convenience and Necessity were received from carriers. Some of the companies argued that a certificate is a requirement of NeuStar and NANPA for a carrier to obtain telephone numbers. Another common concern was the companies’ understanding that a certificate is necessary in order to interconnect with Qwest (or other ILECs) under Sections 251 and 252 of the Federal Telecommunications Act of 1996 (“Act”). One company pointed out that data services have been declared to be telecommunications services at the federal level. Finally, a few other arguments for the retention of a Certificate were: requirement for rights-of-ways, necessary for government telecommunications contracts and if a certificate were to be cancelled, missed opportunities to compete should a company be required to reapply.

In light of the responses received from Staff’s inquiry into access line use by CLECs, the Commission determined to open 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 asked for written comments addressing the need or purpose of a certification for telecommunication companies that provide services other than basic local exchange service. Commenters were asked to 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?

STAFF REVIEW

Staff's initial investigation began with a letter to all Idaho competitive local exchange carriers (CLECs). Ninety-eight letters were sent out July 20, 2010, with a follow-up to those companies that had not replied on October 1, 2010. The letters requested that the Companies provide access line counts for both residential and small businesses as well as the provision of OCNs (Operating Company Number) codes.¹ Staff reviewed the Company information and also looked at Secretary of State Company standings as well as Commission Annual Reporting, regulatory assessments and Idaho Universal Service Fund reporting.

The responses fell into three distinct groups of competitive carriers in Idaho. The first group was the usual competitive carrier providing basic local exchange services to residential and small business customers. Members of this group are in compliance with the Commission's rules, are current with their regulatory fee assessments and in good standing with the Secretary of State.

¹ OCNs also known as company codes are assigned by NECA. The OCN is a four digit number used to identify local telecommunications providers. It is used on Access Service Requests as well as in the NPA-NXX ordering process. A telecommunications provider can have more than one OCN, if they offer different types of service or operate in several different states. The main OCN number assigned to the provider is referred to as the Parent OCN.

Another group consisted of 29 companies that did not respond, had their notices returned by the post office as “addressee unknown” or were not in good standing or cancelled with the Secretary of State. Moreover, these companies have not paid regulatory fees and have become an on-going concern for the Fiscal Staff of the Commission. Because these companies cannot be located and are not in compliance with Commission regulatory requirements, Staff believes a separate docket will need to be opened to revoke this group’s certifications and price lists.

The final group of carriers became the focus of this case. On November 9, 2010, a final letter was sent out to these 40 carriers. The letter explained that the Commission was conducting a review of carriers that were not providing local exchange services as defined by Idaho Code. The letter further stated that the Commission was prepared to take appropriate steps to verify that Certificates were issued to carriers providing basic local exchange services. Staff received immediate responses to its final letter. Some of these responses were filed with the Commission’s Secretary and some were sent directly to Staff. Of the 40 letters that were sent, 17 written responses strongly objected, six companies agreed to rescind and two had already relinquished. Fifteen companies have not replied.

In response to Staff’s letter, some companies objected to possible relinquishment of their CPCN. Some of the recurring responses pointed out that a gap exists in the application of Idaho law and implementing the rules relating to rights of CLECs under Sections 251 and 252 of the Act. As the Commission acknowledged in its findings, 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. Many carriers argued that processes relating to the Act such as interconnection, obtaining telephone number resources and/or company codes (OCNs) require some sort of ‘certification’ from the Idaho Commission authorizing carriers to provide telecommunications services. Without it, the carriers argued, they are prevented from entering the Idaho local exchange market.

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 as defined under the federal act.” According to the FCC,

the definition of “telecommunications services” includes both retail and wholesale services.² Another Company proposed a resolution for the Commission to bridge the gap between state and federal law by adopting an alternative that is in place in Iowa. During Staff’s investigation it found that Colorado also had implemented a unique arrangement that provided an alternative to certification for those “other” companies.

Staff believes there is a disparity between what state commissions have traditionally done with CPCNs and what the FCC defines or requires for services, creating a significant challenge and conflict in the progression of telecommunications services. This conflict is not unique to Idaho and has required states to alter, or adapt, their statutes, rules and guidelines so that competition is not impeded in their states. The FCC could certainly assist the states by reviewing its numbering and other rules that are more than a decade old. In the interim, the ability of states to mesh the two jurisdictional issues has created some unique solutions to further the goal of the Act.

IOWA PLAN

In Iowa, the Utilities Board established a separate “certification” process to be used by local exchange carriers that do not meet the state CPCN requirement but satisfy the requirements of the Act. The certificate is referred to as an “order in lieu of certificate.” The Iowa Board found that by establishing this separate certification process it was able to “exercise regulatory flexibility in a changing telecommunications environment.”³ Staff believes that this would comport with the Idaho Legislature’s stated intent to encourage the development of competition in the local exchange markets in Idaho and would provide “other” service providers the ability to obtain numbering resources, continue to interconnect with the incumbent local exchange carriers and also obtain OCNs.

COLORADO PLAN

When petitioned by a VoIP services provider for a CPCN, the Colorado Commission issued a Letter of Registration (LOR) to provide emerging competitive telecommunications

² See *Memorandum Opinion and Order, Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*. FCC, DA 07-709, ¶ 12

³ State of Iowa Department of Commerce Utilities Board, Docket No. TCU-08-7, page 2.

services along with a CPCN. The CPCN was for the provision of basic local exchange services and the LOR addressed the “other” services the Company was going to provide. The Colorado Commission found that “until such time as the Federal Communications Commission (FCC) makes a determination on the classification of Voice over Internet Protocol (VoIP) services as either a telecommunications service or an information service . . . this Commission will grant a temporary waiver on its own motion of the requirements. . .” The Colorado company indicated that it was going to provide wholesale switching and interconnection VoIP services to cable providers and similarly situated wholesale customers.

NUMBERING RESOURCES

Staff contacted the Pooling Administrator (PAS) at NeuStar to determine whether there were exceptions to the requirement of a CPCN for number resource distribution. Staff also contacted the North American Numbering Plan Administrator (NANPA) to obtain information regarding Numbering Resource Utilization/Forecast Report (NRUF)⁴ reporting requirements for a non-certificated company. According to the PAS, a CPCN is needed in order for a company to receive numbers. When Staff inquired as to how the Iowa Order in Lieu of a Certificate is handled, Staff was told that it depends upon each State’s final order as to whether or not NeuStar can accommodate the number resource request and FCC guidelines. In the case of Iowa, the Order in Lieu of Certificate has worked thus far.

Ultimately, the FCC mandates that a company hold a CPCN or other authorization before any telephone numbers are granted. In its First Report and Order the FCC ordered that, “carriers must provide, as part of their applications for initial numbering resources, evidence (*e.g.* state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource.”⁵ The Order goes on to require contracts for unbundled network elements, network information showing that equipment has been purchased and is operational or will be in place to provide

⁴ NRUF is a semiannual report compiled by the North American Numbering Plan Administration, based on information provided by the telecom industry in accordance with the FCC.

⁵ FCC 00-104 , Para 97, *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rule Making*

service within 60 days of the numbering resources activation date. The burden is on the carrier to demonstrate that it is both authorized and prepared to provide service before receiving initial numbering resources. These requirements apply to *all* carriers requesting numbering resources.

DELEGATED AUTHORITY

In March 2007, the Idaho Commission was granted Delegated Authority by the FCC to implement number conservation. The Act allows the FCC to delegate to state commissions or other entities jurisdiction over numbering. In the Numbering Resource Optimization Notice,⁶ the FCC concluded that thousands-block number pooling is an important resource optimization strategy, essential to extending the life of the North American Numbering Plan (NANP). Idaho has a single area code (208) and by implementing mandatory pooling the Commission has significantly extended the exhaust date. Staff is confident that because of the IPUC's Delegated Authority, allowing "other" carriers the ability to obtain numbers should not significantly compromise the 208 area code given that all companies are required to provide forecast/utilization reports and pool numbers. When Idaho was granted Delegated Authority, the exhaust date for the 208 Area Code was projected to be second quarter 2010. Since implementing mandatory pooling, the exhaust date has been extended to the third quarter 2015 and has been consistently pushed out every quarter.

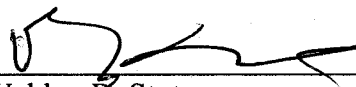
STAFF RECOMMENDATION

Staff believes that this Commission has the authority to establish an alternative to a CPCN for "other" Telecommunications providers. *Idaho Code* § 62-615 explicitly grants the Commission full power and authority to implement the Act. Moreover, the statute provides for the Commission to promulgate rules and/or procedures necessary to carry out the duties authorized or required by the Act. In addition, the Commission would be better able to monitor and enforce number pooling requirements if all companies file for certification with the Commission. Therefore, Staff recommends the Commission:

⁶ See *Numbering Resource Optimization Notice*, 14 F.C.C. Rcd 10322, 10383-84 (June 2, 1999).

1. Implement a procedure that grants an Order in Lieu of a Certificate similar to the process in Iowa. Carriers that provide "other" telecommunications services and receive an Order in Lieu of a Certificate must provide an OCN and maintain all number reporting requirements.
2. For Companies that already have CPCNs, leave them in place and implement the new Order in Lieu of a Certificate prospectively, if the Commission deems this an appropriate solution.
3. Mandate that all carriers comply with the Commission's rules, pay all requisite regulatory fees, maintain current company information and remain in good standing with the Secretary of State.
4. Require wholesale companies that receive numbering resources to be responsible for all NRUF reporting requirements using its own OCN. Should the numbers be given to an end user of the wholesale company, the wholesale provider should still be responsible for all number resource management reporting requirements.
5. Open a docket, issue orders to show cause, and revoke the certificates and price lists of the 29 CLECs that were unresponsive to Staff's investigation and are no longer certified with the Secretary of State.

Respectfully submitted this 28th day of March 2011.


Weldon B. Stutzman
Deputy Attorney General

Technical Staff: Carolee Hall

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