

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF) CASE NO. GNR-T-98-4
CTC TELECOM, INC. FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY .) ORDER NO. 27673
TO PROVIDE LOCAL EXCHANGE SERVICE)
AS A COMPETITIVE LOCAL CARRIER AND)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)

On April 21, 1998, the Commission received an Application from CTC Telecom, Inc. seeking a Certificate of Public Convenience and Necessity to provide facilities-based local exchange service and toll access telephone service as a competitive local exchange carrier. CTC also requested it be designated as an eligible telecommunications carrier ("ETC") pursuant to Section 214(e)(2) of the federal Telecommunications Act of 1996 and claimed it was a rural telephone company as defined under state and federal law. It also requested that its service area, for the purposes of universal service obligations, be limited to the geographic boundaries of the development.

Notice of Modified Procedure was issued on June 3, 1998. Order No. 27548. Two extensions of time were granted to the Staff for filing its comments and recommendation. Order Nos. 27601 and 27629.

U S WEST was granted intervention on July 24, 1998. Order No. 27655. CTC and Staff filed comments on July 21, 1998. Staff also filed a discovery motion on July 21, 1998. Oral argument was held on July 24, 1998. At oral argument and in its comments, CTC agreed to defer consideration of its ETC status pending the Commission's decision in GNR-T-98-8 in which the Commission will consider how service areas are designated for the purposes of ETC designation.

Based on a review of the Application, CTC's comments, Staff's comments and on oral argument, the Commission grants CTC's Application and defers its consideration of its ETC designation. The Commission denies the Staff's discovery motion as moot.

BACKGROUND

CTC applied for a Certificate of Public Convenience and Necessity to serve approximately 900 homes and small businesses in a new development called Hidden Springs Development to be located in Ada County near Boise, Idaho, off Dry Creek Road. CTC alleges that if it is certificated to provide local exchange service in Hidden Springs, it will meet the definitions of "common carrier," "telecommunications carrier," and "rural telephone company" under the federal Telecommunications Act. U S WEST Communications, Inc. is currently certificated to provide service in the area in question but does not have facilities in place there. On May 26, 1998, CTC filed a price list with the Commission for information purposes pursuant to *Idaho Code* § 62-606. No interconnection agreements in Idaho have been negotiated by CTC. CTC will provide basic local exchange service, as well as, additional Title 62 services.

CTC was issued a certificate of incorporation on February 17, 1998, and is a wholly-owned subsidiary of Cambridge Telephone Company. Cambridge is a fully regulated rural telephone company providing Title 61 services and receiving Idaho Universal Service Funds pursuant to *Idaho Code* § 62-610. CTC stated that its parent company, Cambridge, will provide the initial capital required by CTC. It has no assets or capital of its own.

CTC entered into its contract with Hidden Springs Development on April 7, 1998. CTC's contract requires it to provide the telecommunications, cable television, high speed data transfer capabilities and other services to the development and its residences. According to the contract, CTC was to have dial tone service to each residential lot by October 1, 1998, with interim phone service by May 15, 1998.

Hidden Springs Development is a new planned development of approximately 900 residences and light commercial businesses to be located north of Boise near Idaho State Highway 55. Hidden Springs is within the Boise School District. Children from Hidden Springs will attend Cynthia Mann Elementary, Hillside Junior High and Boise High. Boise is the largest metropolitan area in Idaho. Because this development is under construction, no other local exchange carrier has provided service to the development, although U S WEST does provide local exchange service to existing customers in the Dry Creek area. Only CTC will have facilities-based service in the Hidden Springs Development.

CTC stated it intends to provide basic local exchange service, extended area service (“EAS”) to U S WEST’s Boise calling area, touch-tone service, high speed data services, access to toll services, access to emergency services (911), and Lifeline and Link-up services for low income residents. This development, however, does not appear to include low income housing. CTC stated it will construct the telephone plant in accordance with standards established by the federal Rural Utilities Services (formerly the REA).

COMMISSION FINDINGS

The Commission finds that this Application presents unique legal and financing issues for the Commission that the Commission has not previously considered.

CTC is the first applicant to request a Certificate of Public Convenience and Necessity in order to provide non-price regulated Title 61 basic local exchange service as a facilities-based carrier to a new development under construction in which no other facilities-based carrier presently has facilities providing service to customers. Under Idaho law, CTC is not an incumbent telephone corporation and is, therefore, not price regulated. *Idaho Code* §§ 62-603(6) and 62-622(2). Moreover, unless the Commission conditions its Certificate of Public Convenience and Necessity or adopts rules establishing standards for interconnection and access, CTC would not be required to provide unbundled access, to negotiate wholesale prices or to generally facilitate competition for its services. The Commission finds that this set of circumstances would not promote customer choice in service providers as mandated by the legislature.

CTC is also a wholly-owned subsidiary of a fully regulated Title 61 Idaho USF rural local exchange carrier — Cambridge Telephone Company. *Idaho Code* § 62-613 prohibits Cambridge from subsidizing nonprice-regulated telecommunication services with those telecommunication services price-regulated by the Commission. In this case, CTC, submitted no financial data in support of its Application. It simply stated as follows:

As a recently formed corporation, CTC does not have current financial statements to provide to the Commission. CTC’s parent company, Cambridge Telephone Company (“Cambridge”), will provide the initial capital required by CTC, and Cambridge’s financial statements are on file with the Commission. The Applicant respectfully requests that the Commission take official notice of those filed documents.

Application at p. 3. The Commission requires all applicants for Certificates to provide sufficient information to establish the applicant possesses adequate financial resources to provide the proposed services. In this case, CTC has no independent resources or assets and CTC's reliance on Cambridge raised several questions for the Staff.

The Commission will address each of these issues below.

CTC's Certificate of Public Convenience and Necessity

Staff recommended that the Commission condition this Certificate to ensure customer choices. CTC objected, suggesting the Commission had no authority to impose conditions.

The Commission has carefully considered whether conditioning CTC's Certificate is the best method for protecting the public interest and promoting competition. Contrary to CTC's assertion, the Commission finds that it clearly has the authority to condition CTC's Certificate to ensure customer choice as recommended by the Staff. *Idaho Code* §§ 61-528, 62-615(3) and 62-622(5). The Commission rejects CTC's assertion that the Commission has no authority over it because it is a competitive local exchange carrier and that the Commission's authority is preempted by federal law. Nothing in the federal Telecommunications Act of 1996 preempts the Commission's authority to impose appropriate and competitively neutral conditions on competitive local exchange carriers where those conditions are necessary to protect the public interest. 47 U.S.C. §§ 151, 152(b), 251(d)(3), 252(e)(3), and 253(b); *See Louisiana Public Service Commission v. Federal Communications Commission*, 476 U.S. 355, 374-375, 106 S.Ct. 1890, 1901-1902 (1986); *See Iowa Utilities Board v. Federal Communications Commission*, 135 F.3d. 535, 541 (8th Cir. 1998). The Commission finds, however, that conditioning CTC's Certificate is not the best method for protecting the public and advancing the legislature's plan to create competition. *See Idaho Code* § 62-602(2).

The Commission finds that conditioning CTC's Certificate would only protect Hidden Springs Development's basic local exchange customers and would not address future applications or those local exchange carriers that have already received certificates for larger service areas. Rather, the Commission finds that adopting rules setting the standards for interconnection and access in unserved areas is the better approach and orders a Rulemaking docket be opened and temporary rules adopted, effective immediately. Therefore, the Commission finds it is not necessary to condition this individual Certificate because it and all similarly situated facilities-based competitors

providing basic local exchange service in unserved areas will have the same standards for providing interconnection and access in those areas.

CTC's Financial Responsibility

Staff urged the Commission only grant a conditional Certificate and proposed several conditions designed to ensure there is no cross subsidy between the fully regulated Title 61 parent company, Cambridge, and its subsidiary, CTC, in violation of *Idaho Code* § 62-613. CTC objected and again suggested the Commission has no authority to impose conditions.

The Commission finds that it has continuing authority to impose financial requirements on all applicants for Certificates of Public Convenience and Necessity. *Idaho Code* §§ 61-528, 62-615(3) and 62-622(5); Order No. 26665 as clarified by Order No. 26738. Moreover, where the applicant is the wholly owned subsidiary of a Title 61 fully regulated company, the Commission may require additional verification that *Idaho Code* § 62-613 requirements are being met. Based on Staff's recommendation and review, the Commission is satisfied that Staff's concerns about cross subsidization can be addressed by Staff continuing to verify that the controls and allocations for CTC recommended by Staff have been implemented by Cambridge. The Commission orders Staff to notify the Commission when these requirements are met. At this time, however, the Commission is satisfied that the Certificate may be granted.

ORDER

IT IS HEREBY ORDERED that upon review of the filings in this case, the law, oral argument and determination of the Commission, that CTC Telecom, Inc. is granted a Certificate of Public Convenience and Necessity to provide local telecommunications service in Hidden Springs Development.


IT IS FURTHER ORDERED that CTC Telecom, Inc. shall provide the Commission with a draft legal description for its final Certificate.

IT IS FURTHER ORDERED that Rulemaking docket, Case No. 31-4201-9801, be opened for the purpose of adopting temporary and proposed rules governing the standards for access and interconnection in unserved areas and that CTC Telecom, Inc. is subject to these rules.

IT IS FURTHER ORDERED that Staff verify that the controls and allocations for CTC recommended by Staff are implemented by Cambridge Telephone Corporation and that Staff notify the Commission when these requirements are met.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-T-98-4 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GNR-T-98-4. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration in response to issues raised in the petition for reconsideration. See section 61-626, Idaho Code.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th day of August 1998.



DENNIS S. HANSEN, PRESIDENT

Commissioner Nelson was out of the office on this date.

RALPH NELSON, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Myrna J. Walters
Commission Secretary

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