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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Cheri C. Copsey, Deputy Attorney General, in response to Order Nos. 27548, 27601 and 27629 and submits the following comments.  The Staff recommends that a further evidentiary record be developed.

BACKGROUND

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.  In particular, CTC asked to serve approximately 900 homes and small businesses in a new development called Hidden Springs to be located in Ada County near Boise, Idaho, off Dry Creek Road.  The incumbent local exchange carrier is U S WEST Communications, Inc.  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.

On May 26, 1998, CTC filed its price list with the Commission for information purposes pursuant to Idaho Code § 62-606.  No interconnection agreements in Idaho have been negotiated.  CTC anticipates providing 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 substantial 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.

Just prior to the end of the initial comment period, Staff requested information concerning how the transactions are treated by Cambridge and concerning any underlying security agreements between the companies.  A first motion for extension was filed to allow CTC an opportunity to provide the necessary information.  Order No. 27601.  Under that order, that information was due July 10, 1998.  In response, only a copy of the contract between CTC and Hidden Springs was received on June 25, 1998.  No other information was provided.  After a second motion for extension was filed, some additional information was received on July 13, 1998.  Not all the information requested by Staff was received.

CTC entered into its contract with Hidden Springs on April 7, 1998.  It did not apply for a Certificate of Public Convenience and Necessity until April 21, 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 -- a little over three weeks after its Application was filed with the Commission.

Hidden Springs 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.

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).

STAFF FINDINGS AND RECOMMENDATIONS

This Application presents unique legal and financing issues for the Commission that neither the Commission nor any other state authority has previously considered.  CTC seeks to provide non-price regulated local exchange service to a completely new development as a competitive local exchange carrier (“CLEC”).  CTC requests the Commission restrict its service area to this new development in its Certificate of Public Convenience and Necessity.  Furthermore, it requests the Commission designate it as an ETC in this service area for the purposes of receiving both State and Federal funding, thereby limiting its obligation to provide universal services to customers in this development only and in no other area.  Moreover, as a “competitive local exchange carrier,” unless the Commission conditions its Certificate of Public Convenience and Necessity, no law would require it to provide unbundled access, to negotiate wholesale prices or to generally facilitate competition for its services.  Customers who wanted to use another CLEC or the ILEC, U S WEST, could be required to pay the CLEC or ILEC to overbuild telecommunications infrastructure -- a very expensive proposition.  CTC also asserts it is a rural LEC under both state and federal law.  Because the proposed service area is within the largest populated county in Idaho and only a few miles from Idaho’s largest metropolitan area, this self-certification is problematic.  Finally, CTC is also a wholly-owned subsidiary of a fully regulated Title 61 Idaho USF rural local exchange carrier -- Cambridge Telephone Company -- creating yet another issue regarding its financial ability and reliance on Cambridge.

1.   Certificate of Public Convenience and Necessity

a.  Staff Findings

This case raises significant questions regarding the issuance of a Certificate of Public Convenience and Necessity to CTC as a CLEC and authorizing it to provide basic local exchange service to Hidden Springs.  Unless this Commission imposes a duty on CTC to provide other CLECs with interconnection, access to unbundled network elements, resale of retail services, and collocation and requires CTC to engage in good faith negotiation subject to Commission appeal, Staff believes this Certificate would allow CTC to impede rather than advance the development of local exchange service competition.  There is no evidence in the record to the contrary.  Without Commission action, CTC will have no legal obligation to comply with those obligations automatically placed on an ILEC by the federal Telecommunications Act of 1996 at 47 U.S.C. § 251(c).  Based on the facts of this case, CTC is closer to being an ILEC than a CLEC.

In its 1996 Act, Congress demonstrated its intent to open all markets to potential competitors.  Congress clearly expressed its purpose in enacting the 1996 Act.  As the Federal Communications Commission stated in a case similar to the one before this Commission, Congress’ intent was:

‘to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . .’

In the Matters of Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act and Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act, CC Pol. 96-18, CC Docket No. 97-134 (released May 19, 1997), ¶2.  The FCC found that:

To accomplish this purpose, Congress chose, inter alia, to impose on entities that are classified as incumbent LECs the duties of interconnection, access to unbundled network elements, resale of retail services, collocation, public notification of interoperability changes, and good faith negotiation specified in section 251(c).

Id.  The FCC found that these requirements were crucial to encouraging competition -- the clear goal of the federal Telecommunications Act of 1996 and the same goal the Idaho legislature engrafted into the Idaho law.

These duties require incumbent LECs to share with competitors some of their inherent economic advantages -- advantages that would otherwise render competitive entry very difficult, if not impossible.  For example, the existing infrastructure of the incumbent LEC in an area enables the incumbent LEC to serve new customers therein at a much lower incremental cost than a facilities-based entrant that must install its own switches, trunking, and loops to serve its customers.  Because the incumbent LEC is typically dominant in its service area, it has little economic incentive to assist new entrants.  Prior to the enactment of section 251(c), an incumbent LEC also had the ability to discourage entry and robust competition by refusing to interconnect its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to its customers.

Id.

The Idaho legislature likewise demonstrated its strong intent to create a competitive atmosphere.  Indeed, in removing traditional economic regulatory controls on new entrants and on CLECs, the Idaho legislature clearly anticipated that competition would take the place of traditional utility regulation and would protect Idaho citizens from the effects of an unregulated monopoly.  In 1997, the legislature wrote:

It is the intent of this legislature that effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor.  Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange calling area.

Idaho Code § 62-602(2) (Emphasis added).

This case provides the Commission with the first instance of a CLEC providing new, facilities based, basic local exchange service to an area that is within the service territory of an ILEC but to which service had not previously existed because it is a new development.  As a CLEC, CTC will not automatically be obligated under the federal Act to comply with the ILEC obligations imposed by Congress at 47 U.S.C. § 251(c).

Customers in Hidden Springs may not have real competitive choices in basic local exchange carriers.  While certainly such customers could request a different carrier, if CTC is not obligated by its Certificate to provide, among other things, interconnection, unbundled access or to negotiate in good faith, the customer would be faced with the “non-choice” of requiring another CLEC to overbuild in order to provide that service.  Obviously, no customer would be willing to pay for that over built facility.  Thus, there would be no real choice in providers for the customer.  Moreover, as a CLEC, CTC is not price regulated.  Given the exclusive contract with the development, CTC will be the incumbent provider of local exchange service, not a viable competitor.

Indeed, Staff finds that CTC possesses all of the advantages of incumbency characteristic of the incumbent LECs described above.  Staff believes that these advantages can clearly impede the development of competitive markets for customers located in Hidden Springs.  Staff further believes that approval of this Certificate without imposing additional conditions to promote the clear Congressional and state legislative intent would encourage a proliferation of more so-called CLECs effectively operating as unregulated monopolies by providing new developments or even micro-environments like apartment buildings with non-price regulated local exchange service throughout Idaho.  Indeed, CTC itself stated in its Application, “CTC was organized for the primary purposes of providing local exchange telecommunications service and related services to unserved areas within the State of Idaho.”  Application at 3.  During discussions with Staff, CTC’s representatives indicated that CTC intended to request individual Certificates for new developments throughout the state.  However, the record is not fully developed on this issue.

In Staff’s opinion, this would not be in the public’s interest.  It would not preserve or advance “universal service” or protect the public safety and welfare or ensure the continued quality of telecommunications services and would not safeguard the rights of consumers.  It would be anti-competitive.  It does not promote competition as both Congress and the state Legislature envisioned or intended.

b.  The Commission Has Four Options:

1.  Condition the Certificate to ensure competition.

Pursuant to Idaho Code § 61-528, the Commission may attach to the exercise of the rights granted by any Certificate of Public Convenience and Necessity such terms and conditions as in its judgment the public convenience and necessity may require.  Therefore, Staff would normally recommend that the Commission condition this Certificate on CTC assuming the obligations set forth below.  Staff would further recommend that those obligations only be imposed on CTC after a bona fide request for interconnection, services, or network elements and upon an independent Commission determination that such request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. § 254.  Those obligations are generally as follows:

(1)The duty to negotiate in good faith the particular terms and conditions of agreements to fulfill the duties described in these conditions.

(2)The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network:

(A)for the transmission and routing of telephone exchange service and exchange access;

(B)at any technically feasible point within the carrier's network;

(C)that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D)on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of 47 U.S.C.§ 252.

(3)The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of 47 U.S.C.§ 252.

(4)The duty to provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(5)The duty --

(A)to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B)not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service.

(6)The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(7)The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at its premises, except that CTC may provide for virtual collocation if it demonstrates to the Commission that physical collocation is not practical for technical reasons or because of space limitations.

The Staff finds that these conditions are essential to open competition and that these conditions would help to promote effective competition throughout the local exchange calling area by ensuring that the Hidden Springs customers have service provider choices.  Consistent with that finding, Staff would further recommend that the Commission require all similarly situated CLECs under similar facts to assume these same duties either through the certificate process or through rule.

Complicating this recommendation, however, is the FCC’s First Report and Order, adopted August 1, 1996, in CC Docket No. 96-98 and 95-185.  In that Order the FCC addressed the issue presented here and ruled:

1247.  We conclude that allowing states to impose on non-incumbent LECs obligations that the 1996 Act designates as "Additional Obligations on Incumbent Local Exchange Carriers," distinct from obligations on all LECs, would be inconsistent with the statute.  Some parties assert that certain provisions of the 1996 Act, such as sections 252(e)(3) and 253(b), explicitly permit states to impose additional obligations.  Such additional obligations, however, must be consistent with the language and purposes of the 1996 Act.

FCC Order at ¶1247. (footnotes omitted).  This language attempts to preclude states from imposing additional requirements on non-incumbent LECs.  However, just as many of the commenters to the

FCC contended, the Staff disagrees with the FCC’s analysis.  Additionally, it is not clear the FCC envisioned the stipulation presented in this case.

Staff argues that sections 251(d)(3)(footnote: 1), 252(e)(3)(footnote: 2), and 253(b)(footnote: 3) of the federal Telecommunications Act of 1996 clearly permit states to impose additional requirements on carriers.  Staff agrees with the Illinois, Pennsylvania, District of Columbia, Colorado, New Jersey and Ohio state utility commissions that state commissions are in the best position to determine when it is appropriate to impose particular obligations on new entrants.  In the FCC docket, these parties contended that state imposition of reciprocal obligations would be equitable and would help promote fair negotiation and realistic demands by the new entrants.  Indeed, Staff contends that these conditions are “necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”  47 U.S.C. § 253(b).  Moreover, FCC should not intrude on state jurisdiction.

2.File a Petition with the Federal Communications Commission to have CTC declared an ILEC under 47 U.S.C. § 251(h)(2).

The Commission also has the option of deferring action in this case and petitioning the FCC for an order treating CTC as an ILEC.  Under 47 U.S.C. § 251(h)(2), Congress allows the FCC to treat LECs as incumbent LECs.  In the Interconnection Order, the FCC suggested that state commissions faced with issues such as this case presents, could petition the FCC and request it exercise its authority to treat CTC as an incumbent.  The FCC wrote:

1248.  Section 251(h)(2) sets forth a process by which the FCC may decide to treat LECs as incumbent LECs.  Thus, when the conditions set forth in section 251(h)(2) are met, the 1996 Act contemplates that new entrants will be subject to the same obligations imposed on incumbents.  While we find that states may not unilaterally impose on non-incumbent LECs obligations the 1996 Act expressly imposes only on incumbent LECs, we find that state commissions or other interested parties could ask the FCC to classify a carrier as an incumbent LEC pursuant to section 251(h)(2).  At this time, we decline to adopt specific procedures or standards for determining whether a LEC should be treated as an incumbent LEC.  Instead, we will permit interested parties to ask the FCC to issue an order declaring a particular LEC or a class or category of LECs to be treated as incumbent LECs.  We expect to give particular consideration to filings from state commissions.  We further anticipate that we will not impose incumbent LEC obligations on non-incumbent LECs absent a clear and convincing showing that the LEC occupies a position in the telephone exchange market comparable to the position held by an incumbent LEC, has substantially replaced an incumbent LEC, and that such treatment would serve the public interest, convenience, and necessity and the purposes of section 251.

FCC Order at ¶ 1248. (footnotes omitted).  Therefore, the Commission could petition the FCC for an order treating CTC as an ILEC.

3.The Commission could simply grant the Application without condition.

The Commission could grant the Application without condition.  Staff does not recommend this action.  As stated above, in Staff’s opinion, this would not be in the public’s interest.  It would not preserve or advance “universal service” or protect the public safety and welfare or ensure the continued quality of telecommunications services and would not safeguard the rights of consumers.  It would be anti-competitive.  It does not promote competition as both Congress and the state Legislature envisioned or intended.

Moreover, it does not shield the Commission from future action by other CLECs seeking to compete in Hidden Springs from petitioning the FCC pursuant to 47 USC § 253.  The federal 1996 Act specifically prohibits state commissions from acting so as to effectively prohibit any entity from providing competitive interstate or intrastate telecommunications service.  47 USC § 253.  If a CLEC finds that approving this Application effectively prohibits it from competing for Hidden Springs customers, thus creating a lack of competitive neutrality, that CLEC could petition the FCC to

preempt the Commission’s decision.  See Silver Star Telephone Company, Inc.’s Petition for Preemption and Declaratory Ruling.  CCB Pol 97-1 adopted September 23, 1997.

4.The Commission could order additional discovery and/or schedule an evidentiary hearing.

The Commission could schedule an evidentiary hearing or permit additional discovery as requested by the Staff’s Discovery Motion filed July 21, 1998.  This option would provide the Commission with a factual basis for making its decision.  While Staff has been able to develop some, although still not adequate, evidence concerning the financial issues raised by the Application, there is virtually no evidence in the record to support a finding by the Commission that this Application either promotes or inhibits competition.  Therefore, one final option for the Commission is to schedule an evidentiary hearing and/or to facilitate speedy discovery.

d.  Staff Recommendation

Staff is concerned that due to the present litigation postures of the parties that any decision this Commission makes will be subject to additional litigation.  It is also concerned that the evidentiary record on the issue of competition is lacking.  Therefore, Staff recommends that the Commission either order discovery and/or schedule an evidentiary hearing to take evidence on the facts that support a determination that this Application promotes competition and does not inhibit competition.  This could be avoided if the CTC would stipulate that it will provide competitive opportunities by agreeing to do those things that promote competition as laid out in 47 USC § 251(c).

2.  CTC’s Financial Responsibility

a.Staff Findings

In this case, the Applicant, 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 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.

Cambridge is a fully regulated Title 61 rural local exchange carrier (“RLEC”).  Idaho Code § 62-613 prohibits Cambridge from subsidizing nonprice-regulated telecommunication services with those telecommunication services price-regulated by the Commission.  Moreover, the Commission is prohibited from attributing revenues earned from nonprice-regulated services or affiliates (such as CTC) to basic local exchange services and it cannot permit expenses incurred in producing those revenues to be attributed to the cost of providing basic local exchange services.  Id.

Therefore, without more information on how Cambridge is funding this venture, Staff could not assess CTC’s financial ability.  The Commission also has a reciprocal duty to insure that Cambridge’s ratepayers are not subsidizing the non-price regulated (Title 62) services of CTC.

Therefore, in order to establish that CTC has adequate financial resources to provide facilities-based local exchange services without adversely impacting Cambridge’s Title 61 customers or the Idaho USF, Staff requested CTC to provide additional data.  Staff’s request was aimed at demonstrating that Cambridge has sufficient controls and related procedures to maintain a separation of regulated and non-regulated revenues and expenses to insure there is no cross-subsidization in violation of statute.

Moreover, because Cambridge received over $413,000 from the state USF for the year ending June 30, 1997, Staff requires assurances that expenses related to CTC are not used to justify additional USF.  See Idaho Universal Service Fund Annual Report For the Year Ended June 30, 1997.  Therefore, Staff requested additional information and assurances concerning the way Cambridge treats this transaction and requested CTC to likewise show the extent of its financial responsibility.  On July 13, 1998, CTC provided some of the documentation required by Staff but not all.  It appears that CTC is not sufficiently far along to have created those separations.  It does not even yet have its own ledgers or checking account.

b.  Staff Recommendation

Staff reviewed the documents provided by CTC that reflect the current internal accounting controls and separation between Cambridge and CTC.  Staff concluded that adequate internal accounting controls and separations can be developed but are not now in place.  Therefore, Staff recommends that CTC’s Certificate be granted conditionally until Staff can verify the controls and allocations for CTC have been implemented.  Staff will notify the Commission when these requirements are met and then recommend that the Certificate conditions be removed.

The following list reflects the basic areas that must be verified.  The year-end financials for Cambridge related to the CTC transactions must also be verified.

Verify executed copies of all agreements between Cambridge and CTC exist and are complete.

Verify executed copies of stock certificates are complete.

Verify implementation of internal accounting controls.

Verify compliance with the established procedures for separation and/or allocation of regulated and non-regulated operations, including management time.  This is necessary to assure the accuracy and completeness of accounting records and the separation of transactions between the parent company and subsidiary.

Verify final proper accounting for subsidiary investment by Cambridge in CTC Telecom, Inc.

Verify final guarantees for loans or performance are in compliance with authority granted by the Idaho Public Utilities Commission.

3.  Designation as an Eligible Telecommunications Carrier

1.  Staff Findings

In areas not served by a rural telephone company, the federal Telecommunications Act of 1996 and Federal Communications Commission’s (FCC) Universal Service Order No. 97-157, require state commissions designate more than one common carrier as an eligible telecommunications carrier (“ETC”) for the designated service area.  Each additional telephone carrier requesting designation as an ETC must meet all requirements set by 47 U.S.C. § 214(e)(1).  Among other things, 47 U.S.C. § 214(e)(1) requires a local exchange carrier to offer those services throughout the service area for which the designation is received.

Pursuant to the federal Telecommunications Act of 1996, the Commission must designate the ETC service area in order for the ETC to receive federal universal service funding.  An ETC service area is defined as a “geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.”  47 U.S.C. § 214(e)(5).  In its Universal Service Order, the FCC recommended that a designated ETC service area should at least be “sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors.”

CTC’s Application indicates CTC’s services will be provided solely within the area designated as the Hidden Springs development.  CTC requested designation as an ETC for the Hidden Springs development area and requested that the Hidden Springs be its service area.  While the proposed development is within U S WEST’s service territory, the development is under construction and no service has ever been provided to the Hidden Springs development.  Service has been provided by U S WEST up and down the Dry Creek Road area and all around the planned development, but there is no competition in this development.  Essentially this CLEC proposes to limit its obligations to provide “universal service” to the new development.

The purpose for providing both federal USF and Idaho Telecommunications USF to certain carriers (designated as ETCs) in identified high cost areas is to promote the universal availability of certain “universal services” at reasonable rates.  ETCs are designated local exchange carriers that are obligated to offer those “universal services” throughout the geographic area designated by the state Commission.  Idaho Code § 62-610B(1).  Not all local exchange carriers are ETCs.  Designation as an ETC is a Commission function.  Moreover, becoming an ETC creates obligations for those local exchange carriers; i.e. to offer “universal service” throughout a service area designated by the Commission.  In other words, because being an ETC makes a local exchange carrier eligible for federal and state support, both Congress and the state legislature placed certain duties on those ETCs.  Designation of the appropriate service area is important.  An ETC should not be designated without closely examining where that ETC should offer universal services and promote competition.

2.  Staff Recommendation

This Commission recently opened a new docket to consider how to designate the service areas for both CLECs and ILECs in Case No. GNR-T-98-8.  Because CTC is not presently offering or providing service and neither the Idaho Telecommunications USF nor the federal USF is fully established, Staff recommends deferring this request until the issues are fully considered in Case No. GNR-T-98-8.

4.  Designation as a Rural Telephone Company

a.  Staff Findings

A “rural telephone company” is defined under state and federal law as:

. . .  a local exchange carrier operating entity to the extent that such entity

(a) provides common carrier service to any local exchange carrier study area that does not include either-

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Idaho Code § 62-603 (10); 47 U.S.C. § 153 (37).  CTC is located within the most populated county, adjacent to the most populated metropolitan area.

b.  Staff Recommendation

For the reasons stated above, designation of CTC as a rural LEC is premature and Staff recommends deferring this decision until the Commission determines whether CTC is an ETC and in what service area it should be required to offer universal service.

5.  Toll Limitation Waiver

a.  Staff Findings

CTC states it will offer all of the services required of an ETC, with the exception of toll limitation.  The FCC authorized state commissions to grant a waiver of the requirement of providing toll control or other toll limitation services “upon a finding that exceptional circumstances prevent an otherwise eligible telecommunications carrier from providing . . . toll limitation.”  FCC’s Universal Service Order (FCC 97-157), ¶ 388; codified at 47 C.F.R. 54.101(c).  Any waiver period should be limited to the existence of those exceptional circumstances and not extend beyond the time necessary for that eligible telecommunications carrier to complete network upgrades.  Id.  Staff finds that technical limitations on the ability of carriers, including CTC, to currently offer toll control continue to exist.  Moreover, the Commission has previously granted waivers to all Idaho carriers designated as ETCs.  The Commission acknowledged that all ETCs could provide toll blocking.

b.  Staff Recommendation

Therefore, Staff supports granting a similar waiver to CTC if the Commission designates it as an ETC and if it grants its Application.

Respectfully submitted this                day of July 1998.

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Cheri C. Copsey

Deputy Attorney General

Technical Staff:  Wayne Hart

CC:WH:jo\umisc\comments\gnr-t-984.cc

**FOOTNOTES**

1:

Preservation of state access regulations.--In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

2:

Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

3:

(b) State Regulatory Authority.--Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.