

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF INTERMOUNTAIN INFRASTRUCTURE)	CASE NO. IGL-T-18-01
GROUP, LLC TO PROVIDE FACILITIES-)	
BASED NON-BASIC)	
TELECOMMUNICATIONS SERVICE)	ORDER NO. 34130
THROUGHOUT IDAHO)	

On April 19, 2018, Intermountain Infrastructure Group, LLC ("IIG") applied to the Commission, per Procedural Order No. 32277 and IDAPA 31.01.01.114, for registration as a facilities-based provider of non-basic local telecommunications services in Idaho. The Commission issued a Notice of Application and Notice of Modified Procedure with a July 30, 2018, comment deadline. *See* Order No. 34078. Commission Staff filed the only written comments. As detailed below, we now deny IIG's Application.

THE APPLICATION

IIG is a Delaware limited liability company with its principal place of business in Burlingame, California. Application at 1. Idaho's Secretary of State authorized IIG to transact business in Idaho as of March 26, 2018. *Id.*; Exhibit A. IIG seeks to register as a facilities-based provider of non-basic local telecommunications services in Idaho for purposes of "provid[ing] dedicated private line circuits and dark fiber that will require access to the poles and conduit of incumbent local exchange carriers" ("ILECs"). Application at 2.

In its Application, IIG agreed to comply with rules applicable to competitive providers of non-basic local telecommunications services in Idaho. *Id.* IIG further agreed that it would be subject to numbering conservation measures, including mandatory one thousand block pooling, donation back to the pool of unused or underutilized thousand number blocks, and submission of utilization/forecast reports at the one thousand block level for each rate center within its service territory. *Id.* at 3.

STAFF COMMENTS

Staff expressed concern that "[i]ncreasingly certain entities are appearing before the Commission in order to register as providers of non-basic local exchange services, or wholesale telecommunications services, under Commission Order No. 32277, by attempting to fit within the

seemingly broad definition of ‘telecommunications services’ at *Idaho Code* § 61-603(14).” Staff Comments at 2. Staff argued this type of registration is improper.

Staff explained that telephone companies are not traditional public utilities or treated as such by the Commission. For example, they have been rate de-regulated for over a decade in Idaho, and CPCNs are not required for telephone corporations offering non-basic local exchange services. *Id.* citing Order No. 32059 at 2-3. Further, federal law precludes the Commission from regulating information services like VoIP, cable, and wireless. *Id.*

Staff next explained that the Commission lacks jurisdiction over IIG, including the ability to register or regulate it, because the Commission only has jurisdiction over “telephone corporations” and IIG is not a “telephone corporation” under Idaho’s Telecommunications Act of 1988. The Act defines “Telephone Corporation” as “every corporation or person . . . providing telecommunications services for compensation within this state.” *Idaho Code* § 62-603(14) (emphasis added). The Act defines “telecommunications services,” in turn, as “the transmission of two-way interactive *switched* signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means . . . which originate and terminate in this state, and are offered to or for the public . . . for compensation.” *Idaho Code* § 62-603(13) (emphasis added).

While the Act does not define what “switched” means, Staff explained that, in standard telecommunications parlance, companies only provide “switched” information over the public switched telephone network (“PSTN”), which is an integrated network of switches that open dedicated channels to connect party A to party B wherever located. *See* Staff Comments at 3. Staff also noted that while certain technologies, such as VoIP—which again, the Commission has no authority over—“utilize forms of packet switching (e.g., data transport to a customer over leased T-1 lines from the [ILEC] or its own fiber network of packetized data and voice) [they] may not utilize a ‘switch’ in the traditional telephony terms.” *Id.* Staff believes that the Commission lacks jurisdiction over telecommunication or information services that are not transmitted via a switch, i.e., that are not transmitted via the PSTN. *Id.*

While Staff noted the Commission lacks jurisdiction to regulate telecommunications providers that lack switched services, Staff recognized the Commission previously has allowed those providers to “register” with the Commission to make it easier for them to access federal benefits. Staff explained that the Commission created its “registration process” in the 2008 Time

Warner case, Case No. TIM-T-08-01. In 2008, Time Warner Cable Information Services applied for a CPCN. The Commission denied Time Warner's application because Time Warner was exempt from Title 61 regulation under *Idaho Code* § 62-604. *See* Order No. 32059 at 2-3. In a Petition for Reconsideration, Time Warner stated that it needed a CPCN because, "in its experience, [ILECs] will refuse to interconnect with an entity that does not hold a CPCN." *Id.* Time Warner also claimed the lack of a Title 62 CPCN would prohibit it from obtaining telephone numbers from the North American Number Plan Administrator ("NANPA"). *See id.* at 13-14. The Commission denied Time Warner's Petition and observed that a telecommunications carrier does not need a Title 62 CPCN to obtain an interconnection agreement under federal law. *Id.* at 13. The Commission also found it lacked regulatory authority over paging or wireless carriers, which obtain numbers from NANPA based on their certification under the federal Telecommunications Act, regardless of whether they have an Idaho Title 62 CPCN. *Id.* at 13-14.

After denying Time Warner's Petition, the Commission opened a generic docket "to investigate whether some sort of certification process [would be] appropriate for Title 62 telecommunications providers that do not provide basic local exchange service." Staff Comments at 4 citing Case No. GNR-T-11-01; Order No. 32277 at 2. In that docket, Qwest, AT&T, Time Warner, and Staff commented that the Commission's recognition of "wholesale telecommunications providers [would] enhance or enable the companies' access to local markets and rights and remedies set forth in . . . the federal Telecommunications Act," such as easing access to interconnection agreements, and enabling a company to acquire numbering resources from NANPA. *Id.* The Commission ultimately found it "appropriate to use the registration and review process described in Rule 114 [IDAPA 31.01.01.114] to identify telecommunications providers that do not provide local exchange service, but nonetheless request Commission recognition to assist their entry into the Idaho markets." *Id.* at 4. The Commission thus established a process for a telecommunications company to "[register] as a wholesale provider of telecommunications services in Idaho." *Id.*

Staff noted the Commission never intended its state registration process to provide or promote fiber optic network builders' access to public rights-of-way. Rather, the Commission intended its state registration process to help wholesale providers and non-basic local exchange service providers to ease access to interconnection agreements and numbering resources. *Id.* at 4. Staff further believes that the providers' purported historical difficulty with interconnection and

numbering resources has been substantially alleviated because no state registration is required for interconnection. Likewise, providers may directly apply to NANPA for number resources without any requirement that a state regulate, register, or recognize them.¹ Staff thus believes the Commission's state registration process is unnecessary. *Id.* at 5.

COMMISSION FINDINGS AND DECISION

The Commission has reviewed and considered the record, including IIG's Application and attached exhibits, and Staff's comments. The Commission now denies IIG's Application for registration as a facilities-based provider of non-basic local telecommunications services.

Idaho's Telecommunications Act of 1988 provides the Commission with jurisdiction over "telephone corporations;" that is, over a company that provides "telecommunications services" by transmitting "switched" information through PSTN assets. But the Commission has no jurisdiction to register or certify an entity, like IIG, that does not provide switched-based telecommunications services in Idaho. More specifically, we find we have no authority to regulate or register a fiber optic company like IIG that provides dedicated private line circuits and dark fiber and seeks to register in an effort to avail itself of ILEC poles and conduits. We note IIG does not propose to provide switched telecommunications services. Nor does it claim to need state registration to ease its access to switched network interconnection or numbering resources. Rather, IIG seeks a registration to help it negotiate "structure access" agreements with ILECs. We never intended the state registration to be used for such a purpose, and decline to extend it to do so now. Simply put, we have no jurisdiction or authority upon which to grant IIG's request.

We do note this Order does not prevent IIG or any other entity from attempting to access ILEC structures or public rights of way through another forum or procedure. This Order merely clarifies that the Commission lacks jurisdiction over such activities and service offerings.

ORDER

IT IS HEREBY ORDERED that IIG's Application is denied.

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)

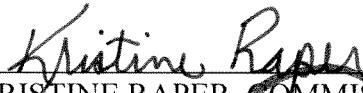
¹ See FCC 15-70, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, *IP-Enabled Services*, WC Docket No. 04-36, *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Telephone Number Portability*, CC Docket No. 95-116, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Connect America Fund*, WC Docket No. 10-90, *Numbering Resource Optimization*, CC Docket No. 99-200.

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 5th day of September 2018.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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