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Attorney for the Commission Staff

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 THROUGHOUT IDAHO)	COMMENTS OF THE
)	COMMISSION STAFF

STAFF OF the Idaho Public Utilities Commission, by and through its Attorney of record, Sean Costello, Deputy Attorney General, submits the following comments.

THE APPLICATION

On April 19, 2018, Intermountain Infrastructure Group, LLC ("IIG" or "Company") filed an Application with 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 within the State of Idaho. Application at 1. IIG is a corporation organized in the State of Delaware and lists its principal place of business as Burlingame, California. *Id.* Idaho's Secretary of State certified that IIG was authorized to transact business in Idaho as of March 26, 2018. *Id.*; Exhibit A. The Company lists Northwest Registered Agent LLC, 784 S. Clearwater Loop, Suite B, Post Falls, Idaho 83854, as its registered agent in Idaho. *Id.* at 2.

IIG states that it "agrees to comply with rules applicable to competitive providers of

non-basic local telecommunications services" in Idaho. *Id.* IIG agrees "it will 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 applicable utilization forecast reports at the one thousand block level for each rate center within its service territory." *Id.* at 3.

BACKGROUND AND JURISDICTION

Staff believes that it is critical, at this juncture, to provide the Commission some history and analysis related to the procedural process companies purporting to provide "telecommunications services" in Idaho bring cases before the Commission. Increasingly 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 believes it is time to address this process and quell any unnecessary confusion or additional registration issues.

As the Commission is aware, it has limited, vestigial regulatory authority over telephone corporations and telecommunications services. Title 62 telephone companies, from a public utility perspective, have been completely rate de-regulated for well over a decade in Idaho, and, as such, are not treated as public utilities, per se, by the Commission.¹ Further, between the time competition entered into the wireline telephone market and today, the telecommunications landscape has obviously, and drastically, changed. However, under federal law, the Commission is prohibited from regulating certain of these "new" information services, such as, among others VoIP, cable, and wireless.

THE TELECOMMUNICATIONS ACT OF 1988

IIG's application is an attempt to fit within the definition of "telephone corporation" providing "telecommunications services" under Idaho's Telecommunications Act of 1996. A "telephone corporation" "means every corporation or person . . . providing telecommunications services for compensation within this state." *See Idaho Code* § 62-603(14). Therefore, in order to be a telephone corporation in Idaho under the Telecommunications Act, "telecommunications services" must be provided. Telecommunications services are defined as "the transmission of

¹ As a result, the Commission has long held that a Certificate of Public Convenience and Necessity (CPCN) is not required for telephone corporations offering non-basic local exchange services. *See* Order No. 32059 at 2-3; and Case No. TIM-T-08-01.

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).

The operative word within the definition of “telecommunications services” is “switched.” In telecommunications parlance, a switch is the need to use the assets of 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. While technology such as VoIP utilizes a form of packet switching (e.g., data transport to a customer over leased T-1 lines from the incumbent local exchange carrier (“ILEC”) or its own fiber network of packetized data and voice) it may not utilize a “switch” in the traditional telephony terms. Hence, the Commission’s lack of jurisdiction over information services not utilizing the PSTN.

Therefore, on a fundamental level, IIG does not fit within the definition of “telecommunications services” because it will not be providing the transmission of two-way interactive *switched* based communications to the Idaho public for compensation. Regardless of this fact, the Commission has provided another route to recognize, or register certain telecommunications providers. This is the route IIG seeks to avail itself of, ostensibly for the purpose of gaining favorable access to ILEC poles and conduit of located in public rights-of-way.

THE TIME WARNER CASE

In 2008, Time Warner Cable Information Services filed an application for a CPCN under *Idaho Code* §§ 61-526 through 61-528. *See* Case No. TIM-T-08-01. The Commission denied Time Warner’s application, noting that Time Warner is exempt from Title 61 under *Idaho Code* § 62-604. *See* Order No. 32059 at 2-3. In seeking reconsideration, Time Warner stated that it needed a CPCN because, “in its experience, incumbent [local exchange carriers] will refuse to interconnect with an entity that does not hold a CPCN.” *Id.* Time Warner also argued that the lack of a Title 62 CPCN would prohibit it from obtaining telephone numbers from the North American Number Plan Administrator (NANPA).² *See* Order No. 32059 at 13-14. In denying

² NANPA is an independent non-governmental entity selected by the Federal Communications Commission (FCC) to administer the North American Numbering Plan and ensure “the efficient and effective administration and assignment of number resources.” 47 C.F.R. § 52.13.

reconsideration, the Commission observed that a Title 62 CPCN is not necessary for a telecommunications carrier to obtain an interconnection agreement under federal law. *Id.* at 13. Also, the Commission found that it lacks any 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.

RULE 114 PROCESS TO “RECOGNIZE” WHOLESALE TELECOMMUNICATIONS PROVIDERS

Following the Time Warner case, the Commission opened a 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.” *See* Order No. 32277 at 2. In that matter, the Commission received comments from Qwest, AT&T, Time Warner, and Staff. All commenting parties stated that recognition by the Commission 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.* at 7.

The Commission 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 8. Thus, the Commission established a process by which a telecommunications company could apply to “be recognized by the Commission as having successfully registered as a wholesale provider of telecommunications services in Idaho.” *Id.* The critical components of this alternative registration process allowed by the Commission was, again, meant to ease access to interconnection agreements and/or to obtain numbering resources from NANPA, not to provide or promote access to public rights-of-way.

However, the main purposes of Order No. 32277 have now been alleviated. The Commission has no actual or apparent authority to regulate wholesale providers or providers of non-basic local exchange services and, under the federal Telecommunications Act, wholesale providers can seek registration and, therefore, ease interconnection through that avenue. Numbering resources for all VoIP providers can be applied for directly through NANPA, with no

requirement that regulation, registration or recognition occur at the state level.³ In other words, the concerns that Time Warner had in 2008 have now been alleviated to the point where the Commission no longer needs to accommodate providers of non-basic local exchange services or wholesale services through the Order No. 32277 “registration” process.

STAFF ANALYSIS AND RECOMMENDATION

Staff has reviewed IIG’s Application for compliance with applicable legal requirements to be registered as a facilities-based provider of non-basic local telecommunications services within the State of Idaho. For the reasons elaborated below, Staff recommends that the Commission not register IIG as a facilities-based provider of non-basic local telecommunications services in Idaho because it is not providing telecommunications services within the meaning and intent of Idaho’s Telecommunications Act of 1988, as amended, and the Order No. 32277 “registration” process is no longer a beneficial or advisable avenue for telecommunications providers attempting to ease interconnection or obtain numbering resources.

Generally, IIG states that it “intends to provide dedicated private line circuits and dark fiber that will require access to the poles and conduit of [ILECs].” *Id.* at 2. However, dedicated private line circuits are not connected to the public telephone system and dark fiber networks are not telecommunications services, per se, where IIG is the provider and installer of infrastructure and not light services for fiber (even then, it would not fit within the definition of “telecommunications service” and would not be subject to the Commission’s jurisdiction).

More specifically, based on descriptions on its public website, IIG states that it provides the following services:

1. Network optimization. Through connecting locations with bandwidths and/or optimizing dark fiber, connectivity to major internet and content peering sites using existing or newly constructed fiber routes;
2. Construction Management. IIG delivers a wide range of construction projects related to the building of new networks, including “turnkey provider” services such as engineering and design, permitting, program and project management, network and civil construction, change management and as-built documentation;

³ 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.

3. Optical Equipment Planning and Install. IIG offers services related to exploration and selection of next generation transport technologies, including “development of network architecture topology, demand growth forecasting, support requirements and phased migration strategies”;
4. Fiber Optic Assurance, Test and Turnup. IIG offers to assure existing fiber optic inventory, newly acquired or constructed routes to prevent network faults and support new implementation with splicing, termination and testing with reporting as well as maintenance and fault restoration; and
5. Route Maintenance. IIG maintains that it will ensure public and private organizations critical telecommunications infrastructure has qualified professionals prepared to provide optimal emergency response and professional maintenance.⁴

Based on these descriptions, in a general sense, IIG builds, supports, and maintains private line and dark fiber optic networks. However, based on its Application, and in informal discussions with Staff, it does not provide these, arguably private functions, on a switched basis. While IIG may argue, though it did not provide any evidence or information in its Application, that it provides data packet switching over fiber network, this service is more akin to “information services”—such as VoIP and cable—and, consequently, not within the Commission’s jurisdiction.

Nor does IIG argue that it needs to avail itself of the Order No. 32277 “registration” process to ease interconnection or obtain numbering resources. In fact, to the contrary, IIG states that it will *not seek* interconnection with ILECs, rather it will seek “structure access” agreements, in order to gain access to ILEC poles and conduits in public rights-of-way. As a builder and maintainer of dark fiber optic networks, nor can Staff foresee any need for IIG to obtain numbering resources from NANPA.

At base, the intent of Idaho’s Telecommunications Act of 1988 and Commission Order No. 32277, coupled with the history of wireline telephone utility regulation and telecommunications rapid technological advancement, does not lend toward Commission regulation or recognition of a private line or dark fiber network builder. The Company is simply not planning to offer switched telecommunications services to the public in Idaho for compensation and therefore should not be registered as a non-basic telecommunications (or wholesale) service provider.

⁴ See, e.g., <https://intermountainig.com/services/> (last accessed July 20, 2018).

Respectfully submitted this 30th day of July 2018.

A handwritten signature in black ink, appearing to read "Sean Costello", with a long horizontal flourish extending to the right.

Sean Costello
Deputy Attorney General

Technical Staff: Carolee Hall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 30TH DAY OF JULY 2018,
SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN
CASE NO. IGL-T-18-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO
THE FOLLOWING:

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SECRETARY

CERTIFICATE OF SERVICE