

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION) CASE NO. NEW-T-18-01
OF NEWMAX, LLC DBA INTERMAX)
NETWORKS FOR DESIGNATION AS AN) ORDER GRANTING
ELIGIBLE TELECOMMUNICATIONS) INTERVENTION
CARRIER)
) ORDER DENYING REQUEST
) FOR HEARING
)
) AMENDED NOTICE OF
) MODIFIED PROCEDURE
)
) ORDER NO. 34237

PROCEDURAL BACKGROUND

On November 5, 2018, Newmax, LLC dba Intermax Networks (Intermax or the Company) applied to the Commission, under 47 U.S.C. § 214(e)(2), 47 C.F.R. §§ 54.201, *et seq.*, Idaho PUC Order No. 29841, and IDAPA 31.46.01 *et seq.*, for an order designating the Company as an eligible telecommunications carrier (ETC) in certain Idaho census blocks. The Company seeks ETC designation so it can receive support it was provisionally awarded under the Federal Communications Commission (FCC) Connect America Fund (CAF) Phase II Auction.¹

On December 19, 2018, the Commission issued a Notice of Application and Modified Procedure that set a January 8, 2019, comment deadline and a January 15, 2019, reply deadline. Order No. 34220 at 2-3. On January 8, 2019, Commission Staff filed comments recommending the Commission approve the Application in the public interest. The Coeur d’Alene Tribe (the “Tribe”), on the other hand, filed a Petition to Intervene, and a separate Protest and Comment and Request for Hearing. On January 15, 2019, the Company replied to the Tribe’s filings by asking the Commission to approve the Application and grant it ETC status without further proceedings or a hearing.

On January 22, 2019, we considered the above outlined filings at our public decision meeting. We now grant the Tribe’s intervention in this docket, deny its request to stay these proceedings, deny its request for a technical hearing, and amend the Notice of Modified Procedure to extend the comment deadlines.

¹ The Company filed a Supplemental Statement on Local Usage Plans with the Commission on December 3, 2018.

SUMMARY OF COMMENTS AND TRIBE'S FILINGS

The Tribe's filings and the comments germane to them are summarized below.

A. Commission Staff's Comments.

Staff recommended the Commission approve Intermax's Application for ETC designation. *See* Staff Comments at 5. Staff did not respond to, nor address, the Tribe's filings, or the Company's reply comments.

B. Tribe's Petition to Intervene, Protest and Comments and Request for Hearing.

The Tribe submitted a Petition to Intervene, and a Protest and Comment and Request for Hearing. The Tribe stated its interest arises because Intermax seeks ETC designation on four Census Blocks on the Coeur d' Alene Reservation, over which the Tribe has sovereign jurisdiction.

The Tribe argued that Intermax failed to properly apply for ETC designation in Idaho and on Tribal lands because Intermax: (a) did not commit to provide Lifeline services (including whether it would provide Lifeline services through its own facilities, or through resold services); (b) did not demonstrate it is authorized to do business on the reservation; (c) did not adequately meet the Tribal consultation provisions of the FCC's regulations; and (d) filed an Application that may not be in the public interest because the Tribe has applied for a competing ETC designation with the FCC. *Id.* at 2-6.

The Tribe asked for an order: (1) allowing the Tribe to intervene as a party; (2) holding the case in abeyance "until . . . the Tribe certifies to the Commission that Intermax is qualified to do business on the reservation"; (2) determining whether sufficient notice was provided to the Tribe; (3) determining whether Intermax would provide Lifeline services and, if so, whether it would provide the services through its own facilities or through resold services); and (4) determining whether Intermax has substantively engaged with the Tribe according to federal regulation. *See Id.* at 2-5 and 47 C.F.R. 54.1004(d). The Tribe requested a hearing under Commission Rule 203 (in a Modified Procedure case, "[p]ersons desiring a hearing must specifically request a hearing in their written protests or comments"). *Id.* at 6.

C. Company's Reply.

The Company replied that the Tribe "does not present issues material to the Commission's consideration of Intermax's application" for ETC designation, and, therefore, no hearing or further proceedings are necessary." *See* Newmax, LLC DBA Intermax Reply Comments at 1.

The Company stated the Tribe's requests should be denied because: (1) the Company will comply with federal and state law if granted ETC designation, but the Company did not have to state every legal requirement to which it is subject, including its participation in Lifeline; (2) while federal law permits ETCs to offer services through their own facilities or a combination of their facilities and the resale of another carrier's services, the Commission need not decide exactly how the Company would provide the services—i.e., whether only through its own facilities, only through resold services, or through a combination of both—as a condition to granting the Company ETCs status; (3) the Company did not have to register to do business and obtain a business license from the Tribe to become an ETC; rather, the Company would obtain requisite Tribal permissions before doing business on the Tribe's lands; (4) the Tribe cites an incorrect and irrelevant FCC regulation to argue that when the Company provides service to Tribal lands, it is subject to consultation obligations as a condition to receiving ETC designation, instead of annual reporting requirements related to Tribal service; and (5) approval of the Company's Application should not be withheld simply because the Tribe has applied for ETC designation with the FCC, because only one recipient of support from the CAF Phase II Auction will be in each census block and therefore the Company cannot compete. *Id.* at 2-4.

While the Company did not object to the Tribe intervening, it denies there is any need for additional process or hearing. Instead, the Company recommends that the Commission approve the Application as it is in the public interest and all federal and state laws have been complied with. *Id.* at 5.

FINDINGS AND DISCUSSION

Our findings and decisions about the Tribe's filings are discussed below.

A. Tribe's Petition to Intervene

We find that no party timely opposed this Petition to Intervene.

We further find that based on the pleadings and other documents filed in this case, intervention by this party would serve the purposes of intervention as described by Rule 74 of the Rules of Procedure and should be granted.

B. Tribe's Protest and Petition for Technical Hearing.

We reiterate our findings in Order No. 34220, where we determined that Modified Procedure, under Rules 201 through 204 of the Idaho Public Utilities Commission's Rules of Procedure, would be an effective way to obtain public input and participation in this matter. The Tribe's Protest and Comments have not persuaded us that a technical hearing with expert testimony

is necessary or would add to the record any more than what could be accomplished through written comments.

Therefore, we deny the Tribe's request to stay these proceedings until the Tribe certifies that Intermax is eligible to do business on the reservation. Likewise we deny the Tribe's request for a technical hearing and, instead, amend the schedule to extend the Modified Procedure comment period, as outlined below. Extending the comment deadline will provide interested parties and persons more time to respond to current comments and filings, and the Commission a more full and substantial record on which to base its decision.

AMENDED NOTICE OF MODIFIED PROCEDURE

YOU ARE HEREBY NOTIFIED that the Commission will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission's Rules of Procedure. *See* IDAPA 31.01.01.201-.204.

YOU ARE FURTHER NOTIFIED that the comment period in this matter will be extended and that any person desiring to state a position on this Application **may file a written comment in support or opposition with the Commission no later than February 8, 2019**. The comment must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this Application shall be mailed to the Commission and the Applicant at the addresses reflected below:

Commission Secretary Idaho Public Utilities Commission PO Box 83720 Boise, ID 83720-0074	Newmax, LLC dba Intermax Networks Michael R. Kennedy, President 7400 N. Mineral Drive, Ste. 300 Coeur d'Alene, Idaho 83815 mkennedy@intermaxteam.com
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Street Address for Express Mail:

472 W. Washington Street
Boise, ID 83702-5918

Copy to:

Stephen E. Coran
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
scoran@lermansenter.com

These comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at www.puc.idaho.gov. Click the "Utility Case Comment or Question Form" under the "Consumers" tab. Complete the comment form using the case number as it appears on the front of this document and click "Submit."

YOU ARE FURTHER NOTIFIED that if no additional written comments or protests are received within the time limit set, the Commission will consider this matter on its merits and enter its order without a formal hearing. If additional written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

YOU ARE FURTHER NOTIFIED that the Company shall file reply comments, if necessary, **no later than February 15, 2019.**

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 62 of the Idaho Code and specifically *Idaho Code* §§ 62-610D, 62-615, and 62-622. The Commission may enter any final order consistent with its authority under Title 62.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01, and *Idaho Code* § 62-619.

ORDER

IT IS HEREBY ORDERED that the Tribe's Petition to Intervene is granted.

IT IS FURTHER ORDERED that the Tribe's request to stay these proceedings is denied.

IT IS FURTHER ORDERED that all parties in this proceeding serve all papers hereafter filed in this matter on all parties of record. This Intervenor is represented by the following for purposes of service:

Coeur d'Alene Tribe:

Eric Van Orden
Office of Legal Counsel
Coeur d'Alene Tribe
850 A. Street
P.O. Box 408
Plummer, ID 83851
Ofc: 208-686-0400
Fax: 208-686-9102
ervanorden@cdatribe-nsn.gov

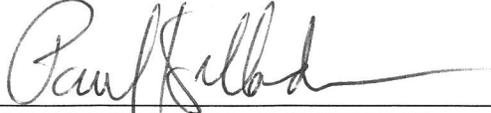
Valerie Fasthorse
Director, Information Technology
Coeur d'Alene Tribe
850 A. Street
P.O. Box 408
Plummer, ID 83851
Ofc: 208-686-5059
Fax: 208-686-9102
vjfasthorse@cdatribe-nsn.gov

IT IS FURTHER ORDERED that the Tribe's request for a technical hearing is denied.

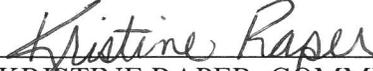
IT IS FURTHER ORDERED that this matter will continue to be processed by Modified Procedure, IDAPA 31.01.01.201-.204. Persons interested in submitting written

comments must do so no later February 8, 2019. The Company may file reply comments by no later than February 15, 2019.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 29th day of January, 2019.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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