

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
TAMARACK VIDEO & TELECOM LLC FOR A ) CASE NO. TAM-T-05-1  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY TO PROVIDE FACILITIES- )  
BASED LOCAL EXCHANGE AND TOLL ) ORDER NO. 29843  
SERVICES WITHIN THE STATE OF IDAHO. )**

On June 24, 2005, the Commission issued Order No. 29808 granting Tamarack Video & Telecom LLC (Tamarack Telecom) a Certificate of Public Convenience and Necessity (CPCN) to provide facilities-based local exchange telecommunications services in the State of Idaho. On July 13, 2005, Matthew Castrigno filed a timely Petition for Reconsideration or, in the Alternative, Petition for Order Requiring Provision of Telecommunications Services. Staff filed an Answer to the Alternative Petition on July 20, 2005 arguing that the Petition for Reconsideration should be denied but that the Commission should open a separate docket to consider the Alternative Petition for telecommunications services from the incumbent local exchange carrier (ILEC), Frontier Communications of Idaho. On July 29, 2005, Mr. Castrigno filed a Reply to Staff's Answer stating that he had no objection to Staff's recommendation. The Commission has determined to deny the Petition for Reconsideration and open a separate docket to consider the Alternative Petition for telecommunications service from Frontier.

**BACKGROUND**

On March 15, 2005, Tamarack Telecom filed an Application for a CPCN to provide facilities-based local exchange telecommunications services. Tamarack filed an Amended Application on April 15, 2005. In the Application, Tamarack Telecom requested the authority to offer facilities-based local exchange telecommunications services in Adams County and Valley County. However, Tamarack Telecom, wholly-owned by Tamarack Resort LLP, plans to offer telecommunications services exclusively to residential and business customers within the Tamarack Resort.

On May 12, 2005, the Commission solicited comments regarding the Company's Application. *See* Order No. 29783. Comments were received from the Commission Staff, Mr. Castrigno, and another private citizen. Only Mr. Castrigno's comments opposed granting Tamarack Telecom a CPCN.

After reviewing the Application and comments, the Commission approved the Application finding that it complied with applicable law, *Idaho Code* § 62-622, IDAPA 31.01.01.111 and 112, and Procedural Order No. 26665. Order No. 29808 at 3. In approving the Application, the Commission noted that “there is no actual facilities-based competition in local telephone service within the Tamarack Resort” and “while the local service offering appears to be at very high rates, [the Commission has] no ratemaking jurisdiction over [Tamarack Telecom], a competitive carrier under federal and state telecommunications law.” *Id.*

### **THE PETITION**

In the Petition for Reconsideration, Mr. Castrigno argued that the Commission should reconsider the CPCN Order, because the Tamarack Telecom service area is located within Frontier’s service area and, according to Mr. Castrigno, Tamarack Telecom does not provide adequate telecommunications service. Mr. Castrigno finds Tamarack Telecom’s service inadequate, because: (1) it requires the purchase of special phones at “exorbitant” cost; (2) does not provide 911 service; (3) is based on fiber optic and not copper cable; and (4) “does not possess the functionality offered by the vast majority of telephone utilities.” Petition at 2.

In the Alternative Petition, Mr. Castrigno requests that the Commission order Frontier, the ILEC, to provide basic local exchange service to customers located in Tamarack pursuant to *Idaho Code* § 61-508. Petition at 3. The Petitioner also noted that, in addition to his comments filed in the instant proceeding, the Commission had received other complaints or requests from Tamarack residents desiring Frontier’s service. Petition at 3-4.

In response to the Alternative Petition, the Commission Staff filed an Answer recommending that the Commission deny the Petition for Reconsideration and open a separate docket to consider the Alternative Petition for telecommunications service. In essence, Staff argued that the Petition for Reconsideration should be denied for failure to meet the Commission’s procedural Rule 331.01 and because the Petition for Reconsideration failed to offer any new information for the Commission to consider in its decision. Answer at 1. As noted above, Mr. Castrigno filed a Reply to Staff’s Answer stating, “Mr. Castrigno is satisfied that opening a separate docket would be an appropriate means of proceeding forward and has no objection to Staff’s overall recommendation.” Reply at 2.

## COMMISSION FINDINGS

Based upon our review of the Petition for Reconsideration, the Commission finds that the Petition fails to meet the standard for reconsideration under Rule 331.01. Under Rule 331.01, a Petition for Reconsideration “must set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous, or not in conformity with the law.” IDAPA 31.01.01.331.01. Further, the Petition for Reconsideration must contain “a statement of the nature or quantity of the evidence or argument the petitioner will offer if reconsideration is granted.” *Id.*; *Idaho Code* § 61-626. The Petition fails to meet these requirements. The Petition does not describe how the Commission’s Order was unreasonable, unlawful, or erroneous; nor does the Petition explain what evidence or argument will be presented if reconsideration is granted. In addition, after reviewing both the Petition for Reconsideration and the record in this case, the Commission finds that the Petition fails to raise any facts or other issues not known to the Commission at the time of its decision. Therefore, the Petition for Reconsideration is denied.

The Commission further finds that it does not have enough information to make a decision on the merits of the Alternative Petition for Order Requiring Provision of Telecommunications Services. Nonetheless, the Commission does find that the Alternative Petition presents issues worthy of investigation. Therefore, the Commission on its own motion will open a separate docket to consider the issues raised in the Alternative Petition.

As the Petitioner described, the Commission has received a number of complaints from individuals in the Tamarack Resort who were unable to obtain telephone service from Frontier upon request. Further, as the Commission noted in the CPCN Order, Frontier does not have the facilities necessary to serve customers in the Tamarack Resort. Order No. 29808 at 3. The Commission will open a separate case to determine whether Frontier should be required to provide telecommunications service to requesting customers in the Tamarack Resort.

## ORDER

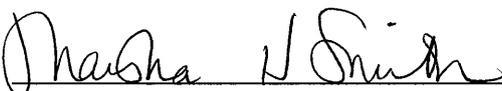
IT IS HEREBY ORDERED that Matthew Castrigno’s Petition for Reconsideration is denied.

IT IS FURTHER ORDERED that the Commission on its own motion opens a separate docket to consider Mr. Castrigno’s Alternative Petition for Order Requiring the Provision of Telecommunications Services.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. TAM-T-05-1 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8<sup>th</sup> day of August 2005.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

**Out of the Office on this Date**  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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