

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: KIRA DALE PFISTERER

DATE: JUNE 10, 2005

RE: APPLICATION OF TAMARACK VIDEO & TELECOM LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO
PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.
CASE NO. TAM-T-05-1.

On March 15, 2005, Tamarack Video & Telecom LLC filed an Application for a Certificate of Public Convenience and Necessity (CPCN) to provide local exchange services in the State of Idaho. Tamarack filed an Amended Application for Certification on April 15, 2005. On May 12, 2005, the Commission solicited comments regarding the Company's Application. *See* Order No. 29783. Three comments were filed: one from the Commission Staff and two from private citizens. The Commission Staff and one private individual support the Application; the remaining individual opposes both the Application and the Commission's use of Modified Procedure.

THE APPLICATION

Tamarack Video & Telecom is an Idaho limited liability company with a corporate office and registered agent located in Boise, Idaho. Tamarack Video & Telecom is wholly-owned by Tamarack Resort, LLC and will provide facilities-based local exchange and interexchange services exclusively to residential and commercial customers at the Tamarack Resort in Valley County, Idaho. Initially, the Company plans to provide local exchange service, Voice over Internet Protocol, and other services through its own facilities. In addition, the Company plans to offer interexchange telecommunications services on a resale basis. The Application states that the Company will compete primarily with the incumbent local exchange

carrier, Frontier. However, Frontier does not currently have an interconnection agreement with the Company.

COMMENTS

Comments from the Public

On May 19, 2005, a private citizen filed the first comment in this case. This comment supports the Application under the assumption that the Company's service offering will provide necessary competition to Frontier.

On May 31, 2005, Matthew Castrigno, a private citizen who owns a home in the Tamarack Resort, filed a comment in opposition to both the Company's filing and the Commission's use of Modified Procedure.

Mr. Castrigno opposes the use of Modified Procedure, because he believes there are material facts in the Application that are in dispute, and he would like a hearing in order for the Commission to resolve these disputed facts. Specifically, Mr. Castrigno questions whether the Company is a competitive carrier. Mr. Castrigno explains that, despite a number of attempts, he has been unable to secure telephone service from Frontier, whose representatives told him that they do not provide service to the Resort, and has been unable to identify any other carrier providing service to the Resort. In addition, Mr. Castrigno questions the Company's characterization of its service offering as "VOIP," since the packetized voice signals are not transported over the Internet and calls to most of Idaho and beyond are subject to toll charges. Finally, Mr. Castrigno would like the Commission to hold a hearing, so the Company can respond to charges that it has offered local telephone service without a CPCN.

In the alternative, Mr. Castrigno requests an extension of the comment period. Mr. Castrigno argues that the comment period should be extended, because the Company's most recently amended Illustrative Price List although submitted to Staff and subsequently faxed to Mr. Castrigno, was not available on the Commission's web site. In addition, Mr. Castrigno states that because most of the Tamarack property owners live out-of-state, these people should be notified by mail of the Company's CPCN Application and allowed more time to comment.

Mr. Castrigno also opposes the Company's CPCN Application. First, he would like to know why the Company has been allowed to provide local telephone service without a valid CPCN. Second, Mr. Castrigno is troubled by the 911 issue, since the Company does not currently provide automatic number indication (ANI) or automatic location indication (ALI).

Third, Mr. Castrigno states again that the Company is not a competitive carrier, since there are no alternative service providers available in the Resort. Mr. Castrigno is further troubled by the way in which the telephone system has been set up, as it seems to preclude even the possibility of competition. Fourth, Mr. Castrigno notes that the Company is charging \$75.00 per month for basic telephone service, although the Illustrative Price List demonstrates that the price should be \$52.50. Finally, Mr. Castrigno is concerned about the Company's use of a proprietary phone. Currently, in order to obtain local telephone service, Tamarack residents must use a proprietary phone and pay an additional monthly charge for each additional phone in the home.

Staff Comments

On June 2, 2005, the Commission Staff filed comments in support of the Application. Staff has worked closely with the Company to help ensure that it meets all of its regulatory obligations. Staff supports the Application on the basis that the Company has met all CPCN requirements and the Illustrative Price List complies with the Commission's Rules and the Idaho Code.

Staff reviews all requests for a CPCN certificate pursuant to *Idaho Code* §§ 61-526 through -528, IDAPA 31.01.01.111 and 112 (Rules 111 and 112), and Procedural Order No. 26665. Pursuant to *Idaho Code* §§ 61-526 through -528, the Commission is vested with the authority to grant CPCN's to public utilities operating in Idaho; Commission Rules 111 and 112 outline the data a public utility must include in an application for a CPCN; and Procedural Order No. 26665 further clarifies the information necessary in order for the Commission to determine if a CPCN should be issued.

In brief, in order to be issued a CPCN, a public utility must provide the following information: (1) name, address, and form of business; (2) the date on which the applicant proposes to begin construction or anticipates that it will provide service, including a written description of customer classes and services proposed to be offered; (3) the proposed service territory; (4) certain financial information; (5) maps regarding the proposed service area; (6) a proposed initial tariff and price sheets; (7) contact information; (8) interconnection agreements if any; (9) an agreement to comply with the Commission's Rules; and (10) an escrow account with a bonded escrow agent if the company requires advanced deposits by its customers. Order No. 26665. Through its review of the Application and numerous discussions with the Company,

Staff finds that the Company has met its burden and the Commission should grant the Application.

In addition, after reviewing the other comments filed in this case, Staff determined that the comments did not raise a material issue with regard to the Application. Recognizing that there have been some consumer complaints associated with the Company's service offering and that the Company initially provided local telephone service without a CPCN, Staff nonetheless believes that the Company has been very responsive to these concerns and has worked hard to meet all regulatory requirements. Furthermore, Staff notes that even though the concerns of Mr. Castrigno are not material to the Commission's decision to grant a CPCN, they may be addressed by the Consumer Division of the Public Utilities Commission following the Company's receipt of a CPCN. *See Idaho Code § 62-615.*

STAFF RECOMMENDATION

Staff recommends that the Commission approve Tamarack Video & Telecom's Application for a Certificate of Public Convenience and Necessity.

COMMISSION DECISION

Does the Commission grant Tamarack Video & Telecom LLC's Application for a Certificate of Public Convenience and Necessity?



Kira Dale Pfisterer

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