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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF ) CASE NO. TAM-T-05-1  
TAMARACK VIDEO & TELECOM LLC FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE ) STAFF'S ANSWER TO  
AND NECESSITY TO PROVIDE LOCAL ) MATTHEW CASTRIGNO'S  
EXCHANGE AND TOLL SERVICES WITHIN ) PETITION FOR  
THE STATE OF IDAHO. ) RECONSIDERATION OR, IN  
) THE ALTERNATIVE, PETITION  
) FOR ORDER REQUIRING  
) PROVISION OF  
) TELECOMMUNICATIONS  
) SERVICES**

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**INTRODUCTION**

Pursuant to the Commission's Procedural Rule 331.05, the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kira Dale Pfisterer, Deputy Attorney General, respectfully submits this Answer to Matthew Castrigno's Petition for Reconsideration of Commission Order No. 29808 granting Tamarack Video & Telecom LLC (Tamarack Telecom) a Certificate of Public Convenience and Necessity (CPCN) to provide telecommunications service. The Commission should deny the Petition for Reconsideration, because it fails to meet the standards for reconsideration under Rule 331.01 and does not present any new information for the Commission to consider. In addition, the Commission should treat the alternative Petition for an Order requiring the provision of telecommunications service in a separate docket.

## BACKGROUND

On March 15, 2005, Tamarack Telecom filed an Application for a CPCN to provide local exchange and toll services within the State of Idaho. The Company filed an Amended Application for Certification on April 15, 2005.

In the CPCN Application, Tamarack Telecom sought authority to provide facilities-based, local exchange and resold, interexchange telecommunications services in Adams and Valley Counties. Application at 1-2. Tamarack Telecom is wholly-owned by Tamarack Resort, LLC and provides telecommunications services exclusively to residential and commercial customers at the Tamarack Resort in Valley County, Idaho. *Id.* at 2-3. The Application states that Tamarack Telecom's proposed service area is within the service territory of incumbent local exchange carrier (ILEC), Citizens Telecommunications Company of Idaho, Inc. dba Frontier Communications of Idaho ("Frontier"). *Id.* at 3.

On May 12, 2005, the Commission issued the Notice of Application and Notice of Modified Procedure. Order No. 29783. In response, the Commission Staff and two private citizens, including Mr. Castrigno, filed comments. One private citizen filed comments supporting the Application and Mr. Castrigno filed comments in opposition to both the CPCN and the Commission's decision to proceed under Modified Procedure. As noted in the Commission's Order No. 29808, Mr. Castrigno's comments expressed concerns regarding: the Company offering local exchange service prior to obtaining a license; the characterization of the Company as a competitive carrier; the characterization of the services provided as Voice Over Internet Protocol (VoIP); the inability of the Company to provide precise location information through its 911 service; and the required use of a proprietary phone. Order No. 29808 at 2.

After reviewing the Application and the comments, the Commission on June 24, 2005 issued Order No. 29808, granting Tamarack Telecom a CPCN. While the Commission was sympathetic to Mr. Castrigno's concerns, specifically the relatively high cost of basic local telephone service, it determined that the Application met the Commission's requirements for a CPCN. *Id.* at 3. In addition, the Commission specifically noted that Tamarack Telecom's proposed service area is within Frontier's service area, but Frontier is currently unable to provide telecommunications services to any potential customer within the Tamarack Resort, because it lacks the facilities to do so. *Id.* at 3.

On July 13, 2005, Mr. Castrigno filed a timely Petition for Reconsideration of the Order. Mr. Castrigno argues that the Commission should reconsider the Order, because the Tamarack Telecom service area is located within Frontier's service area and 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; (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.

### **ARGUMENT**

The Commission should deny the Petition for Reconsideration of its decision to grant Tamarack Telecom a CPCN. The Order rests on sound analysis of the applicable law and pertinent facts, and Petitioner fails to demonstrate otherwise. Nonetheless, Petitioner's alternative Petition for an Order requiring Frontier to provide telecommunications service should be considered in a separate docket.

**A. The Commission Should Deny the Petition, Because It Fails to Meet the Commission's Standards and Fails to Provide the Commission With Any New Information to Consider.**

The two basic reasons Mr. Castrigno seeks reconsideration of the Order are that Tamarack Telecom's service offering is inadequate and its service area is located within Frontier's service area. These reasons are not sufficient to meet the standard set forth in Procedural Rule 331.01, IDAPA 31.01.01.331.01. Further, the Commission was aware of all of the issues surrounding Tamarack's service offering and described by the Petitioner when it granted Tamarack Telecom a CPCN.

**1. The Petition Fails to Meet the Commission's Standards for Reconsideration.**

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.

Mr. Castrigno's 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. Instead, the Petition focuses on Tamarack Telecom's service offering and the fact that Tamarack Telecom's service territory is within Frontier's service territory. The Commission was aware of these issues when it decided to grant Tamarack Telecom a CPCN.

***2. The Petition for Reconsideration Does Not Contain Any Facts the Commission Failed to Consider When Deciding to Grant Tamarack Telecom a CPCN.***

The Commission applied the applicable legal standards when considering Tamarack Telecom's CPCN Application and considered all of the pertinent facts Mr. Castrigno describes in its Petition for Reconsideration. The Petition does not offer the Commission anything new to consider.

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. The Commission clearly applied these standards in its consideration of Tamarack Telecom's CPCN Application. *See* Order No. 29808 at 2-3.

Mr. Castrigno argues that Tamarack Telecom's service offering is inadequate because: (1) it requires the purchase of special phones; (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. These issues are either irrelevant to the CPCN decision-making process or were considered by the Commission in its decision.

The Commission was aware that Tamarack Telecom required the purchase of special phones and does not have E911 functionality.<sup>1</sup> The Commission did not consider the use of special phones to be a material to the decision to grant the CPCN. Further, Valley County does not have E911 functionality, so Tamarack Telecom's ability or inability to provide E911 functionality is of no import. The Commission did not specifically address the fact that Tamarack Telecom's system is based on fiber optic as opposed to copper cable. However, this is a difference without distinction for the purpose of considering a CPCN certificate.

Petitioner does not provide any explanation for its claim that Tamarack Telecom's service offering "does not possess the functionality offered by the vast majority of telephone utilities." Tamarack Telecom now offers stand-alone, basic local telephone service, and that is sufficient under the existing regulatory framework.

Finally, it is irrelevant that Tamarack Telecom's service area is located within Frontier's service territory. Under a previous version of *Idaho Code* § 61-615(1), an existing CPCN represented an exclusive service area franchise. However, this State statute was repealed in 1997, because it was effectively preempted by the federal Telecommunications Act of 1996. 1997 Idaho Sess. Laws Ch. 192, § 6. Pursuant to the federal Telecommunications Act of 1996, "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). The purpose behind this statute is to foster competition in the telecommunications market.

Similarly, since 1997, the Commission has not regulated the prices of local exchange carriers, such as Tamarack Telecom, that were not providing local exchange services on or before February 8, 1996. *Idaho Code* § 62-622(2). The Commission's regulation of these companies, deemed Title 62 companies, is extremely limited, as the law assumes that they offer a competitive service offering. Another reflection of the assumption that there is competition in the telecommunications marketplace is the recent Title 61 deregulation statute, *Idaho Code* § 62-615. Under *Idaho Code* § 62-615, the incumbent carriers, such as Qwest, may now opt out of Title 61 regulation.

In sum, even though the Petitioner is not enjoying the fruits of a competitive marketplace with a plethora of service options at competitive prices, the law assumes that he will

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<sup>1</sup> Tamarack Telecom in fact offers basic 911 service.

be. The Commission was acting within this legal framework and implementing the laws set forth by the Legislature when it considered the Tamarack Telecom Certificate. The Commission applied the correct legal standard in a reasonable manner. Therefore, the Petition for Reconsideration should be denied.

**B. The Commission Should Open a Separate Docket to Consider Mr. Castrigno's Petition for Order Requiring Provision of Telecommunications Service from Frontier, a Non-Party to the CPCN Proceedings.**

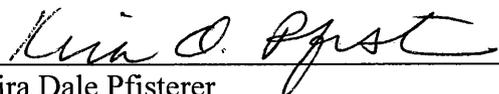
As Mr. Castrigno is aware, Staff has already started an informal inquiry into the possibility of Frontier providing service to Tamarack customers. Staff has contacted Frontier on numerous occasions both during the process of investigating Tamarack's CPCN and as a separate matter. Nonetheless, because Mr. Castrigno is making this formal request for service from Frontier, a non-party in the instant proceeding, through a Petition for an Order requiring the provision of telecommunications service.

Petitioner's request for service from the incumbent carrier is worthy of investigation; however, this request is not related to the Commission's decision to grant Tamarack Telecom a CPCN. The issues raised by a request for service will include the costs of providing such service and a proper allocation of such costs. These issues are best handled in an independent docket with a case number that reflects the true nature of the proceedings and the parties involved.

**CONCLUSION**

In sum, Staff does not believe that Mr. Castrigno's Petition for Reconsideration provides any new information relevant to the Commission's decision to grant Tamarack Telecom a CPCN. Nonetheless, Mr. Castrigno raises interesting questions regarding Frontier's potential obligation to serve him, and other customers within the Tamarack Resort. Staff would like to consider these issues separately from the Tamarack Application for a CPCN.

RESPECTFULLY SUBMITTED this 20th day of July 2005.

  
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Kira Dale Pfisterer  
Deputy Attorney General

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 20th DAY OF JULY 2005, SERVED THE FOREGOING **STAFF'S ANSWER TO MATTHEW CASTRIGNO'S PETITION FOR RECONSIDERATION**, IN CASE NO. TAM-T-05-1, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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