

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF 365 WIRELESS, LLC FOR A)	CASE NO. THW-T-12-01
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY TO PROVIDE LOCAL)	
EXCHANGE SERVICES WITHIN THE)	ORDER NO. 33902
STATE OF IDAHO.)	

On September 12, 2017, Commission Staff moved to dismiss as moot the Application of 365 Wireless, LLC, (the Company) to become a facilities-based competitive local exchange and interexchange carrier in Idaho pursuant to *Idaho Code* § 62-615. *See* Staff's Motion to Dismiss. The Company did not answer the Motion. Having reviewed the record, the Commission grants Staff's request to dismiss this case for mootness as set out in greater detail below.

BACKGROUND

On April 18, 2012, 365 Wireless, LLC (Company) applied to become a competitive local exchange and interexchange carrier (CLEC) in Idaho and obtain a Certificate of Public Convenience and Necessity (CPCN) (Application). *See* IDAPA 31.01.01.114 (Rule 114). At that time the Company was effectively incorporated through the Idaho Secretary of State's office.

In its Application the Company included, among other things, certificates of organization and qualification to conduct business in Idaho, financial documentation, income statements, and illustrative tariffs. However, Commission Staff determined that the Application was incomplete or otherwise deficient and, over the past four years, attempted to work with the Company to address Staff's perceived deficiencies in the Application.

Staff again attempted to communicate with the Company on Wednesday, June 21, 2017, in an email communication following a phone call in which the Company agreed to withdraw its 2012 Application. The email stated that if Staff did not receive further instructions from the Company by June 26, 2017, it would take steps to attempt to dismiss Case No. THW-T-12-01 without prejudice.

Staff found that the Company filed a Withdrawal of Foreign Registration Statement with the Office of the Secretary of State of Idaho on June 24, 2016. The Company's Statement

of Withdrawal was found to conform to Idaho law by the Secretary of State and the Company is no longer allowed to transact business in Idaho.

STAFF'S MOTION TO DISMISS

As a result of the Company's deficient Application, the age and inactivity of the case, and the current inability of the Company to transact business in Idaho, Staff asserted that there is no need for the Commission to further consider the Company's pending Application.

Staff argued that a case is "moot when 'the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'" *Idaho Sch. For Equal Educ. Opportunity v. Idaho State Bd. Of Educ.*, 128 Idaho 276, 281, 912 P.2d 644, 649 (1996) (quoting *Bradshaw v. State*, 120 Idaho 429, 432, 816 P.2d 989 (1991)). Staff stated that the Company's Application was insufficient in its original form and is now over five years old and contains outdated and insufficient information which has left the case docket in an inactive status for much of that time. Further, Staff stated that the Company is no longer a registered, active business association in Idaho. Finally, the Company failed to respond to notice provided as a result of Staff's Motion to Dismiss.

DISCUSSION AND COMMISSION FINDINGS

We find that the Company's Application is moot because it is no longer a registered business association under Idaho law, is not actively pursuing its pending Application, and did not respond to Staff's Motion.

Based on the foregoing, we find it reasonable to dismiss the Company's Application without prejudice.

ORDER

IT IS HEREBY ORDERED that Staff's Motion to Dismiss Case No. THW-T-12-01 is granted and the Company's Application is dismissed without prejudice.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. For purposes of filing a petition for reconsideration, this order shall become effective as of the service date. *Idaho Code* §§ 61-626 and 62-619. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See id.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of October 2017.

5th



PAUL KJELLANDER, PRESIDENT




KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane Hanian
Commission Secretary

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