

DECISION MEMORANDUM

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

FROM: CECELIA A. GASSNER

DATE: MAY 11, 2006

**SUBJECT: CASE NO. CTC-T-05-2
IN THE MATTER OF THE INVESTIGATION TO DETERMINE
WHETHER IT IS REASONABLE FOR FRONTIER COMMUNICATIONS
OF IDAHO TO PROVIDE TELECOMMUNICATIONS SERVICE TO
CUSTOMERS LOCATED IN THE TAMARACK RESORT**

In Order No. 29845 issued on August 11, 2005, the Idaho Public Utilities Commission opened this case to investigate whether Citizens Telecommunications Company of Idaho, Inc. dba Frontier Communications of Idaho ("Frontier") should be required to provide telecommunications service to requesting customers located in the Tamarack Resort in Valley County. In such Order, the Commission directed Frontier to respond to the following questions:

1. Is Frontier willing to provide telephone service to the Tamarack Resort?
 - a. If yes, under what conditions?
 - b. If no, then why does Frontier believe it is reasonable to decline the requests for service?

Further the Commission directed the Staff to conduct an investigation to determine whether it is reasonable for Frontier to provide service to the Tamarack Resort. The investigation was to include determining the investment required to enable Frontier to provide service and the effect such investment will have on the rates paid by its customers.

BACKGROUND OF MATTER

On March 15 2005, Tamarack Telecom filed an Application for a Certificate of Public Convenience and Necessity ("CPCN") to provide facilities-based local exchange telecommunications services within the Tamarack Resort, which is located in Adams and Valley

Counties. Tamarack filed an Amended Application on April 15, 2005. Tamarack Telecom is wholly-owned by Tamarack Resort LLP, offering telecommunications services exclusively to residential and business customers within the Tamarack Resort ("Resort"). The main service offered by Tamarack is called Triple Play, which includes Voice over Internet Protocol (VoIP) as well as Internet and video services. This Triple Play service is offered using a technology called Fiber-to-the-Home (FTTH).

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. Matthew Castrigno, and another private citizen. Only Mr. Castrigno's comments opposed granting Tamarack Telecom a CPCN. Mr. Castrigno felt that the cost of the bundles using the FTTH technology was excessive and that he did not necessarily want the all-inclusive package of video, VoIP and Internet. When Tamarack introduced its Basic Combo Package, it included 32 video channels with two premium channels, VoIP Phone S MBS Internet Access and a fax line. The installation cost for the Basic Combo Package is \$99 with a monthly service fee of \$150. To be responsive to the concerns voiced in the comments about the price of the bundled package, on or about April 27, 2005, Tamarack introduced a telephone service only package. This package required an installation fee of \$75 (to install the single IP phone) and then a \$75 per month service fee. The \$75 monthly fee includes the single line IP phone service as well as all class and custom calling features.

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.* 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). On July 13, 2005, Mr. 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 (Frontier). On July 29, 2005, Mr. Castrigno filed a Reply to Staff's Answer stating that he had no objection to Staff's recommendation. Mr. Castrigno's Reply to Staff's Answer stated that, "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. The Commission subsequently denied the Petition for Reconsideration and opened a separate docket to consider the Alternative Petition for telecommunications service from Frontier. On August 11 2005, the Commission issued Order No. 29845 opening Case No. CTC- T-05-2.

As the incumbent local exchange carrier (ILEC), Frontier is obligated to provide telecommunications services to any potential customer requesting such service within Frontier certificated area. *Idaho Code* § 61-526. The Commission sought Staff analysis so as to decide whether it should require Frontier to make any additions, extensions, or improvements to its facilities that "ought reasonably to be made" or to require new facilities "to promote the security or convenience of its employees or the public." *Idaho Code* § 61-508. The Idaho Supreme Court has concluded that this requirement applies to areas within a utility's established service area, and it also requires evidence showing that the utility will be insured a fair return on its investment. *Murray v. Public Utilities Commission*, 27 Idaho 603, 150 P. 47 (1915).

Moreover, as an eligible telecommunications carrier (ETC), Frontier has additional service obligations it must meet in order to be eligible for federal universal service funding. This Commission recently determined that these obligations include the obligation to provide service upon reasonable request. *See* Order No. 29841 at 8-9.

On August 17, 2005, Qwest Corporation filed a Petition to Intervene. The Commission granted Qwest's Petition on September 1, 2005. On August 30, Mr. Matthew Castrigno filed a Petition to Intervene. The Commission granted Mr. Castrigno's Petition on September 30, 2005. No comment or pleading has been filed by Qwest or Mr. Castrigno since the grants of their respective Petitions.

STAFF INVESTIGATION

On August 22, 2005, Frontier Communications responded to Order No. 29845 regarding the Company's willingness, and ability, to provide telephone service to Tamarack

Resort customers. In its response, Frontier stated that it “is willing to serve customers within it’s [sic] certificated areas including Tamarack Resort, to the extent that it can acquire access to the customers and be compensated for all costs to serve the area.” The Company provided two possible scenarios under which it may be able to provide telecommunications service to the Tamarack Resort customers.

In its first scenario, Frontier explained that it could provide service within the resort by overbuilding Tamarack facilities. The Company stated that this would be cost prohibitive because of the right-of-way issues within the privately-owned resort as well as the extremely high construction costs necessary to install facilities. Some of the costs discussed included roads, sidewalks, curbs, gutters and landscaping replacement in addition to “utility lines, cables pipes, etc., which have already been placed and would have to be identified, marked, worked around, or possibly moved.”

In its second scenario, Frontier explained that it could serve customers of the Resort by interconnecting with the existing facilities of Tamarack. For this to occur, Tamarack would need to allow Frontier access to its network at “reasonable rates.” Another requirement would be that Tamarack make personnel available to perform troubleshooting and be responsible for its part of the circuits on a “timely basis.” Frontier also explained that it would need to purchase and install network equipment “to enable Tamarack’s fiber-to-the-home facilities to interface with Frontier’s existing network.” Frontier pointed out that this scenario would be a workable solution if, as in scenario one, the Company were allowed to recover all its costs incurred to serve those customers who live within the Resort area.

Finally, in its August 22, 2005 response to Commission Order No. 29845, Frontier cautioned that its costs to provide services might be prohibitive because of the lack of facilities right-of-way access and that the expense of bringing facilities to customers could be excessive. The Company also indicated that it has no agreement with Tamarack Resort to interconnect with the resorts facilities and that it has not received expressed interest from enough customers to justify the investments necessary to warrant the expenditures necessary for the electronic equipment to collocate.

On August 26, 2005, Staff’s First Production Request was issued to Frontier. In its request, Staff asked the Company to provide “detailed cost analysis” showing how much the Company anticipated it would cost to provide telecommunications services to customers within

the Resort. Specifically, Staff requested engineering diagrams showing plant facilities (conduit fiber, copper, manhole covers and any other plant) the Company anticipated it would need to provide facilities-based telecommunications services to the customers within the Tamarack Resort. Staff also asked the Company to provide another detailed cost analysis for collocating and interconnecting with Tamarack's PBX and/or other necessary facilities.

On September 16, 2005, Frontier timely responded to Staff's First Production Request. In its response, the Company indicated that it no longer had engineering diagrams of the facilities installed within the Resort and that the engineers (with their best estimates) put together their analysis to provide service within the Resort. The Company concluded that it would be very costly and time consuming to overbuild Tamarack's facilities. Their initial analysis is provided below:

**FACILITIES-BASED TELECOMMUNICATIONS
SERVICES WITHIN THE RESORT**

Using existing conduit within the resort:

Calix C7 equipment in Donnelly office	\$23,000.00
Calix C7 equipment at Tamarack	35,000.00
Spares for equipment	19,000.00
Site prep Engineering and installation	12,000.00
Copper cable to feed within Tamarack using their conduit	200,000.00
Labor to place in conduit	100,000.00
Splice points	22,500.00
Placement of splice points	<u>45,000.00</u>

TOTAL COSTS	\$456,500.00
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The Company pointed out in its response that it would still need to obtain permission from Tamarack to access existing conduit from Tamarack Resort in order to place Frontier facilities within the conduit.

If the permission to utilize Tamarack's existing conduit were not granted, Frontier would then incur the following costs to place facilities directly in the ground:

Copper cable within Tamarack Resort based on:

Trenching within the complex	\$1.2 - \$2.0 MILLION
Asphalt Restoration	\$61,000.00

In order to place facilities directly in the ground, Frontier would also need to obtain right-of-way within the Tamarack Resort, which could be another substantial expense that is not included in this response. Frontier feels that these costs are substantial and may not be prudent for the minimal number of customers requesting service from Frontier within the Tamarack Resort.

Costs relating to interfacing with the Tamarack Resort facilities, interconnection expenses and other incidental costs that Frontier believes it will incur are as follows:

GR 303 bay in Donnelly office	\$66,900.00
NTI Engineering and Installation	9,000.00
Company Engineering and labor	<u>5,000.00</u>
TOTAL COSTS	\$80,900.00

It is important to remember that currently, Tamarack Telecom and Frontier do not have any interconnection agreements between them, and that estimates provided by Frontier do not reflect charges that Tamarack may impose upon Frontier to interconnect facilities. Until such time as the Companies negotiate an agreement, these numbers are only estimates.

On August 26, 2005, Staff contacted Tamarack Resort's IT Director and informally requested some cost estimates to determine what the Resort would charge Frontier for the use of its network. On September 15, 2005, Tamarack responded to Staff's informal inquiry. In its response, Tamarack indicated that it had "invested almost \$500,000 in infrastructure" to provide its triple play services to the homes within the resort. Therefore, the Resort determined that they would ask "about \$100/mo/home for someone to use our network." The Resort went on to explain that this amount would be negotiated "based on the amount of bandwidth they would require and the number of homes they would service."

Second Production Requests from Staff to Frontier

On November 4, 2005, Staff issued its second set of production requests to Frontier. In its request Staff was looking to see if any progress had been achieved between the Companies with respect to interconnection negotiations. Staff was also inquiring as to what costs Frontier customers would be assessed to recover interconnection expenses and provision of services to the Tamarack Resort customers. Additionally, Staff asked if Frontier and Tamarack had further discussed any feasibility factors for interconnecting the two Companies and what costs would be incurred in that situation.

On December 1, 2005, Frontier responded to Staff's Second Production Request in a timely manner. In its response Frontier explained that it had held preliminary discussions with Tamarack regarding interconnecting the two Companies' facilities. Tamarack Resort had indicated that it would require Frontier to "pay approximately \$100.00 per line per month to utilize Tamarack's outside plant facilities." Frontier determined that this cost, along with better-understood interconnection expenses that the Company must spend to interconnect with Tamarack Resort, resulted in expenses considerably higher than originally anticipated. Frontier had done further research and analysis of the overall costs of investment that would be necessary to interconnect with Tamarack's unique network. Frontier's new analysis showed that, in addition to the previous estimates, the Company would also need the following equipment in order to interconnect and "interface for voice services and co-locate a router for data services at the Tamarack switching center."

GR-303 software and hardware added to Frontier's Donnelly Central Office

Budgetary quotes from the vendor are as follows:

Hardware and Software loaded costs	\$66,120
Northern Telecom Engineering and Installation	8,650
Frontier engineering and labor	<u>3,000</u>
TOTAL	\$77,770

Cisco 7206 Router placed at the Tamarack switch location to provide high-speed Internet service

Loaded Material	\$32,130
Frontier engineering and labor	<u>1,000</u>
TOTAL	\$33,130

These costs, along with the estimates discussed above and the monthly fee that Tamarack had determined it would charge for the use of its network, led Frontier to determine that it could not provide affordably priced service to Tamarack's residents through this method. The Company also explained to Staff that further discussions (with Tamarack) were considered unlikely to change this determination, so no further discussions regarding interconnection were scheduled to take place.

Staff asked Frontier how it intended to recover its costs associated with providing telecommunications services to the Tamarack Resort customers should this event occur. The Company replied that it intended to implement its line extension allowance of \$2,560 and then

“all non-recurring facilities charges in excess of this allowance would be due from the connecting customers within the resort.”

On December 6, 2005, Mr. Castrigno, through his attorney, requested further information regarding the line extension charge and the possibility of refunds. Mr. Castrigno also asked why the Commission “doesn’t require Tamarack to lower the rate it wants to charge Frontier. With respect to the issue of line extension charges and the possibility of refunds, Staff explained that Frontier’s tariff language explains the process for applying the credit and provided Mr. Castrigno with instructions on how to find the tariff for the parties to review. To address Mr. Castrigno and his attorney’s final inquiry as to why the Commission does not require Tamarack Resort to lower the rate it charges Frontier, Staff explained that it is a matter of jurisdiction and that interconnection between Companies is governed by Section 251 of the federal Telecommunications Act of 1996. Specifically, Sections 251(a), (b), and (c) spell out the requirements of local exchange carriers. As a competitive local exchange carrier (CLEC), Tamarack is subject to Sections 251(a) and (b) but is not subject to (c) which applies only to incumbent LECs. Because Tamarack is not subject to (c), the loops that it is offering to lease to Frontier are not subject to the Commission’s pricing authority and are market-based. An invitation was offered to Mr. Castrigno and his attorney to meet with Staff to further discuss this jurisdictional issue if it was deemed necessary for them. Staff has not heard from the parties since that discussion regarding this offer.

Staff’s counsel has spoken with Mr. Castrigno’s counsel and conveyed that it is Staff’s belief that the Commission does not possess the authority to order Tamarack to lower its rates. Counsel for Mr. Castrigno conveyed the Complainant’s desire is to maintain the docket in the hopes for bringing the resolution he sought.

STAFF RECOMMENDATION

Staff, Frontier and Tamarack have been diligent in responding to the issues raised by Mr. Castrigno and his attorney. Staff appreciates the opportunity to resolve the issues the parties have raised with respect to alternative telecommunications services within the Tamarack Resort. However, Staff believes that this case should be closed.

As set out in Staff’s investigation, and noted in the Commission’s Order granting a CPCN to Tamarack, this Commission has no ratemaking authority over Tamarack. *See* Order No. 29808. *See* also Telecommunications Act of 1996, § 251. Moreover, the costs associated

with the provision of such services would be excessive and imprudent for Frontier to incur in order to provide service to Mr. Castrigno and perhaps a very small number of customers within Tamarack Resort.

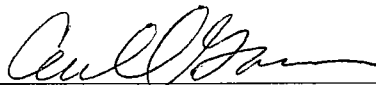
Staff believes that Tamarack was responsive to the needs of the customers who did not wish to subscribe to the Basic Combo Package when it offered the alternative telephone (Single IP Phone) package at a considerably reduced rate. Staff has had further discussions regarding alternative telephone service offerings within the Resort. According to the Resort, there is a cellular tower across the valley from the Resort where Nextel and Verizon offer cellular services with a reliable signal. This cellular service allows residents and visitors yet another alternative telecommunication service.

Staff is satisfied that the Companies have been cooperative and worked very hard to find an amicable resolution with this case. However, it is Staff's belief that it is neither reasonable nor prudent for Frontier to provide service to Tamarack Resort. The investment requirement that would enable Frontier to provide the service would be substantial and would result in excessive rates paid by only a few customers at Tamarack Resort. Staff further believes that the Companies as well as the Commission have thoroughly investigated service alternatives to the Tamarack Resort and that the resolution Mr. Castrigno is seeking cannot be ordered by the Commission on the facts of this case. Therefore, Staff does not recommend that the Commission order Frontier to provide service to the Tamarack Resort.

COMMISSION DECISION

Does the Commission desire to close this matter?

If not, how would the Commission like to proceed with further investigation or other action in this matter?



Cecelia A. Gassner

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