

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF MILLENIUM)
NETWORKS, LLC’S NOTICE OF THE) CASE NOS. MNL-T-23-01
ACQUISITION OF CERTAIN ASSETS OF) CTL-T-23-03
CTC TELECOM, INC.)
) ORDER NO. 36077
)

On May 26, 2023, CTC Telecom, Inc. (“CTC”) applied to amend Certificate of Public Convenience and Necessity (“CPCN”) No. 348, seeking to relinquish the right to provide voice and broadband services to residential customers in Ada County, Idaho (“Ada County”). Case No. CTL-T-23-02 (Application at 2).¹ In support of CTC’s application, Millenium Networks, LLC (“Millenium”) filed a notice of acquisition of “substantially all” of CTC’s assets in Ada County in Case No. MLN-T-23-01. Case No. MLN-T-23-01 (Notice of Acquisition at 1). Millenium represented that it entered into an agreement on April 19, 2023, to acquire almost all of CTC’s assets within Ada County (the “Transaction”). Millenium further represented that it intended to offer local exchange services in and around Ada County, which it is already authorized to do under CPCN No. 494. In response to Millenium’s Notice of Acquisition, Commission Staff (“Staff”) recommended the Commission open a new case for CTC to review the asset transfer for compliance with *Idaho Code* § 61-328 and previous Commission orders.

On July 12, 2023, the Commission opened a new case for CTC, provided Notice of the Petition, established a July 27, 2023, public comment deadline and an August 4, 2023, Company reply deadline. Order No. 35852. Subsequently, the Companies independently reached out to Staff’s Counsel and asked for additional time to respond to the discovery propounded by Staff. Additionally, CTC expressed concerns about the relevance of the information requested and wished to discuss those concerns with Staff.

On July 27, 2023, Staff filed its comments, which were intended as interim comments because discovery had not been completed.

On July 31, 2023, Staff, Counsel for Staff, Millennium, and CTC discussed Staff’s discovery requests and the Companies’ concerns. Staff’s Counsel conferred with the Companies

¹ Despite intending to withdraw voice and broadband services, CTC represented that it is providing “fixed wireless services” in Ada County under the assumed name “Wilderness Wireless” and does not seek removal of the right to provide that service in Ada County from the CPCN. Case No. CTL-T-23-02 (Application at 2).

and proposed establishing new, supplemental comment and reply deadlines, to allow Staff to consider the Companies' anticipated discovery responses in this case.

On August 1, 2023, Staff presented a Decision Memorandum to the Commission explaining the need to modify comment and reply deadlines in this case. The Commission granted Staff's request to establish supplemental public comment and new Company reply deadlines.

On August 2, 2023, the Companies filed their responses to Staff interim comments. In their responses, they objected to Staff's discovery requests on the ground that no provision in the Idaho Code provides the Commission with the authority to review asset transfers between telecommunication companies.

On August 9, 2023, the Commission issued a Notice of Supplemental Comment Deadlines establishing a supplemental public comment deadline of August 21, 2023, and a new Company reply deadline of August 28, 2023. Order No. 35879.

On August 21, 2023, Staff filed supplemental comments, identifying the legal authority allegedly authorizing an inquiry into the asset transfer. The Companies replied, contesting the legal basis Staff identified and again requesting dismissal of their respective cases inquiring into the asset transfer.

With this Order, we dismiss both Case Nos. MNL-T-23-01 and CTL-T-23-03 and direct CTC and Millenium to take further action as outlined below.

STAFF'S INITIAL COMMENTS

Staff reviewed Millenium's Notice of Acquisition and believed additional information was necessary to evaluate whether the Transaction satisfies *Idaho Code* § 61-328 and complies with previous Commission orders. Staff noted that it had sent—but had yet to receive responses to—production requests seeking information on the Transaction, and it could not assess the Transaction without the requested information. Consequently, Staff requested that the Commission provide the Companies additional time to respond to the production requests.

COMPANIES' INITIAL REPLY

Despite providing some limited responses, the Companies generally objected to Staff's requests for production, arguing that *Idaho Code* § 61-328 does not apply to transactions involving telephone corporations. Accordingly, both Companies requested dismissal of their respective cases reviewing the Transaction.

STAFF'S SUPPLEMENTAL COMMENTS

Staff responded to the Companies' argument that the Commission lacked authority to investigate the Transaction by identifying other legal authorities that authorize an investigation into the Transaction. Staff noted that the Commission has authority to supervise and regulate public utilities in Idaho, and that the Companies are public utilities under *Idaho Code* § 61-121. Accordingly, Staff asserted that the Commission has jurisdiction over the Companies' business conduct. Despite acknowledging that the Commission lacks authority to regulate the rates of Competitive Local Exchange ("CLEC") under *Idaho Code* § 62-622, Staff observed that the Commission may determine non-economic requirements for all telephone corporations providing basic local services, including service quality standards, filing of price lists, customer notice, and customer relations rules. Likewise, Staff noted the Commission may resolve disputes between telephone corporations and investigate and resolve customer complaints. *See Idaho Code* §§ 62-609(3), -616. Staff cited the preceding legal authority as the basis upon which the Commission granted the Companies' CPCNs and designated CTC an Eligible Telecommunications Carrier ("ETC").

Staff further observed that, to obtain a CPCN or ETC designation, *Idaho Code* § 61-528 and Order Nos. 26665 and 35126 require the submission of financial information that establishes the utility has adequate resources to provide the proposed services. Staff asserted that, although the Companies provided the necessary information when applying for a CPCN or ETC designation, the Transaction and resultant change in the Companies' provision of services in Ada County constitute material changes that required Staff review to update records, verify compliance with CPCN and ETC requirements, and to address public interest issues.

Regarding the application of *Idaho Code* § 61-328, Staff acknowledged the Companies' argument that the statute is inapplicable to telephone corporations. Nevertheless, Staff noted that it generally uses the statute as a guide when evaluating asset transfers between non-electric public utilities. *See Order No. 34416* (stating that the Commission "has an established practice of evaluating the transfer of water systems under the criteria found in *Idaho Code* § 61-328"). Accordingly, Staff asserted the Commission has authority to review the Transaction and the Companies' refusal to adequately respond to production requests hinders that review.

COMPANIES' REPLY TO STAFF'S SUPPLEMENTAL COMMENTS

The Companies again each asserted that the cases opened to review the asset transfer between them should be dismissed because the Commission lacks legal authority to conduct such a review. Despite acknowledging the Commission's authority to regulate public utilities in Idaho under *Idaho Code* §§ 61-121, -501 the Companies contend that they are CLECs exempt from regulation under Title 61 of the Idaho Code. In support of this contention, the Companies note that the Telecommunications Act of 1988 (*Idaho Code* § 62-601, *et. Seq*) created a category of telephone corporations not subject to regulation under Title 61. Without citing specific supporting legal authority, both companies assert that they fall within this category of telephone corporations.

Idaho Code § 62-604, governs the application of the Telecommunications Act and provides, in pertinent part:

Any telephone corporation, except any mutual nonprofit or cooperative telephone corporation, which did not, on January 1, 1988, hold a [CPCN] issued by the commission and, which does not provide basic local exchange service, shall, on and after the effective date of this act, be subject to the provisions of this chapter and shall be exempt from the provisions of title 61, Idaho Code.

Idaho Code § 62-604(1)(a). According to a plain reading of this statutory text, a telephone corporation created after January 1, 1988, is exempt from Title 61 only if it does not provide basic local exchange services. Consequently, if CTC or Millenium is providing basic local exchange service, they would not be exempt from Title 61. Notably, both companies hold a CPCN (a requirement under Title 61 but not the Telecommunications Act) that authorizes the provision of basic local exchange services.

The Companies asserted that possessing a CPCN does not subject them to comprehensive regulation under Title 61 and that, if it did, the Telecommunications Act would be meaningless. Additionally, CTC asserted that the information Staff seeks related to the Transaction is unlikely to result in further lawful action by the Commission. In support of this argument, CTC states that its request to remove territory from its CPCN can be granted regardless of its financial condition. Nor does it have to meet any service quality standards for territory it is no longer serving. According to CTC, the Commission lacks the authority to unwind the Transaction, nor can it force CTC to continue providing services. Thus, in CTC's view, if the Commission did find that it lacked the financial ability to provide service because of the Transaction or that the Transaction was not in the public interest, the only option available to the Commission would be to remove the territory affected by the Transaction from its CPCN.

COMMISSION FINDINGS

The Commission has jurisdiction over the issues in this case under Title 61 of the Idaho Code including, *Idaho Code* §§ 61-501, 502, and -503. Based on our review of the record, we find it reasonable to dismiss the cases opened to review the asset transfer between CTC and Millenium, CTL-T-23-03 and MNL-T-23-01 respectively.

These cases were opened for the purpose of reviewing the Transaction for compliance with *Idaho Code* § 61-328. No provision of *Idaho Code* § 61-328 authorizes commission review of asset transfers between telecommunication companies. Accordingly, we find it reasonable to dismiss CTL-T-23-03 and MNL-T-23-01, which were both opened to review the asset transfer between CTC and Millenium.

However, our decision to dismiss these cases does not conclude our analysis. Both CTC and Millenium have a CPCN, and CTC is designated an ETC. *See* Order Nos. 28059 (granting CPCN No. 348 to CTC); 30867 (granting ETC designation to CTC); 31027 (granting Millenium CPCN No. 494). To obtain a CPCN or ETC designation, telecommunication companies must submit financial information sufficient to establish that they have financial resources to provide the proposed services. *See Idaho Code* § 61-528; Order Nos. 26665 and 35126. Additionally, the Commission has the authority to rescind an order granting a CPCN or ETC designation if the telecommunications company no longer satisfies the criteria to obtain them. *See Idaho Code* § 61-624.

Based upon Millenium's representation that it acquired "substantially all" of CTC's assets in Ada County and the Companies' responses to Staff's production request in these cases, we find that it is prudent to review whether Millenium still satisfies the requirements to hold CPCN No. 494 in a separate case. Similarly, we find sufficient reason to question whether CTC still satisfies the requirements to hold CPCN No. 348 and ETC designation and to warrant investigation of those issues in a separate case. Accordingly, we find it reasonable to direct CTC and Millenium to each file a separate petition and supporting evidence demonstrating they still satisfy the criteria for a CPCN. Additionally, we find it reasonable to direct CTC to include with its petition evidence that it still satisfies the criteria for ETC designation.

ORDER


IT IS HEREBY ORDERED that Case Nos. CTL-T-23-03 and MNL-T-23-01 are dismissed.

IT IS FURTHER ORDERED that CTC Telecom, Inc. and Millenium Networks, LLC each file a separate petition and supporting materials demonstrating they still satisfy the criteria for a CPCN. Further, CTC Telecom, Inc. shall include with its petition evidence that it still satisfies the criteria for ETC designation.

THIS IS A FINAL ORDER. Any person interested in this order (or in issues finally decided by this order) may petition for reconsideration within twenty-one (21) days of the service date of this order with regard to any matter decided in this order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code §§ 61-626 and 62-619.*


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 31st day of January 2024.


ERIC ANDERSON, PRESIDENT


JOHN R. HAMMOND, JR., COMMISSIONER


EDWARD LODGE, COMMISSIONER

ATTEST:


Monica Barrios-Sanchez
Commission Secretary

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