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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF SAFELINK INTERNET,)
L.L.C.'S APPLICATION FOR A CERTIFICATE) CASE NO. SLI-T-20-01
OF PUBLIC CONVENIENCE AND NECESSITY)
TO PROVIDE LOCAL EXCHANGE SERVICES)
IN SOUTHERN IDAHO) COMMENTS OF THE
) COMMISSION STAFF
)
_____)

The Staff of the Idaho Public Utilities Commission comments as follows on Safelink Internet, L.L.C.'s Application.

BACKGROUND

Safelink Internet, L.L.C. ("Safelink") is an Idaho limited liability company with its principal office in Rupert, Idaho. Safelink describes itself as "a facilities-based telecommunication company with wireless towers and fiber delivery." Application at 6.

Safelink plans to provide "communications solutions to enterprise, carrier, governmental[,] and residential customers" throughout southern Idaho. *Id.* at 2 and 6. Safelink services will include Voice over Internet Protocol ("VoIP") phone service, FAX service,¹ and "other individual services." *Id.* at 5.

Safelink states it has not yet entered into any interconnection agreements.

¹According to Safelink's proposed tariff and price sheet, FAX service will require the use of an analog telephone adaptor (commonly known as an ATA). Application, Exhibit B.

Safelink offers services throughout southern Idaho. Safelink asserts it would compete with the incumbent local exchange carriers (“ILECs”) in the region.

STAFF ANALYSIS

Staff has reviewed Safelink’s Application for compliance with applicable legal requirements to be registered as a provider of local exchange services in Idaho. Staff recommends the Commission not register Safelink as a provider of local exchange services in Idaho because it is not providing telecommunication service within the meaning and intent of Idaho’s Telecommunications Act of 1988. Safelink does not provide Commission-regulated services and is therefore ineligible to receive a certificate of public convenience and necessity (“CPCN”).

The Commission’s regulatory authority over telephone corporations is limited and vestigial. With the deregulation of the telecommunications industry in the 1980s and 1990s—culminating in the federal Telecommunications Act of 1996—state authority to regulate the telecommunications industry was greatly curtailed. Idaho’s Telecommunications Act of 1988 (as amended), *Idaho Code* §§ 62-601 through 62-624, reflects these changes.

Under *Idaho Code* § 62-605(5)(b), the Commission has the “authority to determine the noneconomic regulatory requirements related to basic local exchange service for all **telephone corporations** providing basic local exchange service.” (Emphasis added). Basic local exchange service is “the provision of access lines to residential and small business customers^[2] with the associated transmission of two-way interactive switched voice communication within a local exchange calling area.” *Idaho Code* § 62-603(1). Pursuant to this authority, the Commission issues CPCNs to competitive local exchange carriers³ (CLECs) seeking to provide local exchange services in Idaho. IDAPA 31.01.01.114; see Order No. 26665. The purpose of the certification process is “to register and review applications to provide local telecommunications services.” IDAPA 31.01.01.114.

² A small business customer is “a business entity, whether an individual, partnership, corporation or any other business form, to whom telecommunication services are furnished for occupational, professional or institutional purposes, and which business entity does not subscribe to more than five (5) access lines which are billed to a single billing location.” *Idaho Code* § 62-603(11).

³ A CLEC is a telephone corporation that began offering basic local exchange service after February 1996. See *Idaho Code* § 62-603(6).

Only a telephone corporation can be a CLEC. *See Idaho Code* § 62-603(6). A telephone corporation is defined as “every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, providing *telecommunication services* for compensation within this state...” *Idaho Code* § 62-603(14) (emphasis added). “Telecommunication service” is defined as:

the transmission of two-way interactive *switched* signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means (which includes message telecommunication service and access service), which originate and terminate in this state, and are offered to or for the public, or some portion thereof, for compensation. Except as otherwise provided by statute, "telecommunication service" does not include the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service, surveying, or the provision of radio paging, mobile radio telecommunication services, answering services (including computerized or otherwise automated answering or voice message services), and such services shall not be subject to the provisions of title 61, Idaho Code, or title 62, Idaho Code.

Idaho Code § 62-603(13) (emphasis added).

The Commission has previously recognized that the word “switched” refers to information transmitted using the public switched telephone network (PSTN): an integrated network of switches that open dedicated channels to connect party A to party B. *See* Order No. 34130 at 2 and 4. In Case No. IGL-T-18-01, a communications company sought a CPCN to provide “dedicated private line circuits and dark fiber...” *Id.* at 1. In its written comments, Staff recommended the communication Company’s Application be denied because the communications company was not providing “telecommunication service” as defined by *Idaho Code* § 62-603(13), and was therefore not subject to Commission regulation. Staff noted in its comments that “[w]hile technology such as VoIP utilizes a form of packet switching (e.g., data transport to a customer over leased T-1 lines from the incumbent local exchange carrier or its own fiber network of packetized data and voice) it may not utilize a ‘switch’ in the traditional telephony terms.” Staff Comments, Case No. IGL-T-18-01. The Commission agreed with Staff in its final order: “...the Commission has no jurisdiction to register or certify an entity...that does not provide switched-based telecommunications services in Idaho.” Order No. 34130 at 4. The communications company’s application was denied.

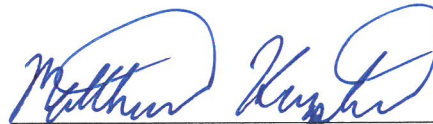
Like the communications company in Case No. IGL-T-18-01, Safelink does not provide “telecommunication service”. Safelink provides VoIP service and VoIP-based FAX service. See Application at 5. VoIP utilizes a broadband internet connection to make calls; it does not utilize the PSTN. As such, VoIP is not a “telecommunication service” under *Idaho Code* § 62-603(13) and is not regulated by the Commission.

Even if VoIP fit within the definition of “telecommunication service”, the federal Eight Circuit Court of Appeals recently ruled that VoIP is an “information service” as defined by 47 U.S.C. § 153(24). *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 717 (8th Cir. 2018), *cert. denied sub nom. Lipschultz v. Charter Advanced Servs. (MN), LLC*, 140 S. Ct. 6 (2019). As state regulation of “information service” is preempted by federal law, the Eight Circuit held the Minnesota Public Utilities Commission could not regulate the plaintiff communication company’s VoIP services. *Id.* at 720; *see Minnesota Pub. Utilities Comm’n. v. F.C.C.*, 483 F.3d 570, 580 (8th Cir. 2007). The *Carter* decision is not binding on the Commission, and it is worth noting that the FCC has thus far refused to categorize VoIP as either an “information service” under U.S.C. § 153(24) or as a “telecommunications service” under U.S.C. § 153(53). See 903 F.3d at 719. Nevertheless, the decision is persuasive. It certainly weakens the argument that the Commission has regulatory authority over VoIP. And if the Commission does not have regulatory authority over VoIP, it should not issue a CPCN to a company that only provides VoIP services.

STAFF RECOMMENDATIONS

Because Safelink is not a “telephone corporation” under *Idaho Code* § 62-603(14), Staff recommends the Commission deny Safelink’s Application to become a CLEC in southern Idaho.

Respectfully submitted this 9th day of July 2020.



Matt Hunter
Deputy Attorney General

Technical Staff: Daniel Klein

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 9TH DAY OF JULY 2020, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. SLI-T-20-01, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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SECRETARY