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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
BLC MANAGEMENT LLC D/B/A ANGLES) CASE NO. BLC-T-09-1
COMMUNICATION SOLUTIONS FOR)
DESIGNATION AS AN ELIGIBLE) COMMENTS OF THE
TELECOMMUNICATIONS CARRIER) COMMISSION STAFF
_____)**

The Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Neil Price, Deputy Attorney General, in response to the Notice of Application and Notice of Modified Procedure, issued on May 29, 2009, Order No. 30823, submits the following comments.

BACKGROUND

On March 29, 2009, BLC Management LLC dba Angles Communication Solution (“BLC” or “Company”) filed an Application, pursuant to Section 214(e)(2) of the Communications Act of 1934, Sections 54.101 through 54.207 of the rules of the Federal Communications Commission (“FCC”) and the rules and regulations of the Idaho Public Utilities Commission, for designation as an Eligible Telecommunications Carrier (“ETC”) for the purpose of receiving federal universal service support. BLC is seeking only low income support, and is not requesting high cost support.

BLC is a Tennessee corporation and is authorized to conduct business as a foreign limited liability company in the State of Idaho. The Company is authorized to provide resold competitive local exchange service throughout Idaho and will provide local exchange and exchange access services using a combination of resale and unbundled network elements, or unbundled network equivalents.

The Company is seeking ETC designation throughout the Qwest Corporation ("Qwest") service territory in southern Idaho.

STAFF ANALYSIS

Staff has reviewed BLC's Application and has analyzed the Company's fulfillment of the federal Telecommunications Act of 1996 ("the Act") and of Commission Order No. 29841 ("the Order").

On June 30, 2008, BLC was granted a Certificate of Public Convenience and Necessity (Case No. BLC-T-08-1) and operates as a competitive local exchange carrier ("CLEC") in Idaho. *See* Order No. 30650.

In the Application, BLC asserts that it is seeking only [federal] low income support, and is not requesting [federal] high cost support. Application at 1. The Company states that it intends to provide local exchange and exchange access services in the designated service area using a combination of resale and unbundled network elements, or unbundled network equivalents ("UNE") obtained through interconnection agreements that allow end-to-end switching and delivery of calls. Application at 2. BLC identifies 64 non-rural wire centers located in the Qwest study area code 475103 (Qwest-south). Application, Exhibit 1. The Company does not seek ETC designation in any wire centers served by a rural telephone company. Application at 8.

BLC cites in its Application, the federal requirements for ETC designation, but does not reference Order No. 29841 that outlines the Idaho ETC designation requirements. On March 17, 2005, the FCC adopted new rules for ETC designation and encouraged state commissions to adopt similar requirements when designating ETCs pursuant to 47 U.S.C. § 214(e)(2). Following the action of the FCC, the Commission sought comments regarding the new federal guidelines for ETC designation. *See* Case No. WST-T-05-1. The Commission then considered the FCC's new rules, the FCC Order, and the filed comments and determined that it was appropriate to adopt new ETC eligibility and reporting requirements in Idaho. This Commission evaluated each of the FCC's new rules separately and implemented some, but not all of the FCC's ETC guidelines. The

Commission adopted only the requirements that were determined to be useful and necessary to implement the duties and responsibilities under the federal Act. In its findings, the Commission stated, “[t]hese new Idaho requirements will help the FCC achieve its goal of bringing greater uniformity to state proceedings while allowing the Idaho Commission to consider the factors it deems the most important to the ETC process in Idaho.” The new requirements were also meant to provide carriers with greater clarity in the ETC designation process in Idaho. *See* Order No. 29841 at 7. Staff, therefore, must evaluate the merits of the BLC ETC designation Application based on the requirements as outlined in Order No. 29841.

Statutory Designation Requirements of the Order

1. Common Carrier Status. Order No. 29841, Appendix at 1. BLC is a common carrier as defined in the Act. The Company provides competitive local exchange telecommunications services in the designated service area. Application at 3.

2. Commitment to Provide Service Upon Reasonable Request. Order No. 29841 at 8. BLC commits to provide service throughout its proposed ETC designated service area to all customers making a reasonable request for service. Application at 11.

3. Provide the Universal Services. Order No. 29841, Appendix at 1. BLC states that it will offer all of the services that are supported by federal Universal support mechanism under section 254(c) as enumerated in the rules of the FCC at 47 C.F. R. § 54.101(a)(1)-(9). Application at 3-7.

4. Advertising. *Id.* BLC states that it will advertise the availability of the services and charges for those services in the designated service area using media of general distribution, as required by FCC rules. Application at 7-8.

5. Public Interest. Order No. 29841 at 15-16. BLC states that “no specific public interest is mentioned, as is the case for areas served by rural telephone companies.” Thus, the Company asserts that the Act provides the PUC “shall designate BLC as an ETC upon finding that the Company meets the nine-point list of services and that it agrees to advertise throughout the designated service area.” Application at 8. The Company states its service is of particular interest to “credit-challenged customers—many of whom are low-income—who generally cannot obtain service from the incumbent carrier.” Application at 9. BLC claims that to its knowledge, Lifeline and Link-Up services lack sufficient advertising to the targeted low income customers in the service area. *Id.*

Staff is sympathetic to the needs of the low-income and “credit-challenged” customers, but does not believe this alone is a compelling public interest argument. Staff carefully assessed the added benefits of granting ETC designation to another competitive eligible telecommunications carrier (CETC) in a service area where other CETCs currently offer service. In this Application, BLC does not appear to offer any unique services, nor present a compelling advantage to the low income customers it intends to serve. The ILEC currently offers Lifeline and Link-Up in the ETC designated service area. In addition other wireless and wireline companies offer Lifeline and Link-Up in the same designated service area. BLC provides no factual information to support its assertion that a lack of advertising exists, nor does it provide evidence that a demand or a need exists for another ETC in the designated service area. Staff, therefore, does not believe BLC has met the burden of proof that granting ETC status to BLC would be of public interest in the designated service area.

6. Tribal Notification. Order No. 29841 at 16. Applicant does not acknowledge this requirement nor address how it intends to provide notification. The Fort Hall Reservation is home to the Shoshone and Bannock Tribes. This reservation covers a land area in four southern Idaho counties: Bingham, Bannock, Caribou, and Power Counties, and includes wire centers identified by BLC in its ETC designated service area.

Additional Eligibility Requirements of the Order

Pursuant to Order No. 29841, all ETC applicants must satisfy the following additional requirements for ETC designation in Idaho.

1. The Commitment and Ability to Provide Supported Services. Order No. 29841 at 8. BLC commits to provide service throughout its proposed ETC-designated service area to all customers making a reasonable request. Application at 11.

2. The Ability to Remain Functional in Emergencies. Order No. 29841 at 10. BLC states that it provides customers “the same ability to remain functional in emergency situations as currently provided by Qwest to its own customers, including access to a reasonable amount of back-up power, rerouting of traffic around damage facilities, and the capability of managing traffic spikes resulting from emergency situations.” Application at 10-11. It appears the Company’s emergency plan relies on those provided by Qwest and it is unknown if BLC intends to provide additional emergency back up measures. Staff, therefore, must assume no emergency back up will be available by BLC to its customers other than the services provided by Qwest.

The Commission believes this requirement demonstrates a commitment to service quality and reliability. The Order specifically requires that, “an ETC applicant must demonstrate that it has reasonable amount of back up power to ensure functionality without an external power source.” It is Staff’s belief that BLC does not appear to provide any value-added services regarding emergency functionality.

3. A Commitment to Consumer Protection and Service. Order No. 29841 at 11. BLC states that it will satisfy all such standards and commits to reporting requirements on consumer complaints per 1,000 lines on an annual basis. The Company also commits to satisfying all applicable state and federal requirements related to consumer protection and service quality standards. Application at 10.

4. Description of the local Usage Plan. Order No. 29841 at 12. BLC states that it offers a local usage plan comparable to the one offered by the ILEC. The Company offers a local usage plan with unlimited calling within the customer’s local calling area for a flat monthly fee. Application at 10.

5. A Two-Year Network Improvement Plan. Order No. 29841 at 8. In the Application, BLC discusses the FCC guideline for a five-year plan. The Company asserts that, “[t]he only circumstances warranting deviation from this requirement is where an applicant’s requested ETC serving territory would qualify it to receive no ‘high cost’ USF support, but only ‘low-income’ USF support.” Application at 9. BLC states it is seeking ETC designation solely for the purpose of reimbursement for provision of subsidized Lifeline and Link-Up services, and therefore, submission of a network improvement plan is not required at this time. *Id.* In the Order, the Commission states, “[t]his case is focused on the merits of the new FCC Rules regarding ETC designation and certification, not on the basis of the USF support calculation. Order No. 29841 at 20. In the Order, no distinction is made between companies that receive federal USF high cost support versus a company that receives only low income support. Staff, therefore, cannot ignore the two-year network improvement plan requirement as outlined in the Order and believes the Company has failed to meet this requirement for an ETC designation in Idaho.

Additional elements of the Application

BLC reports that it has been granted ETC designation in Alabama, Illinois, Kentucky, Louisiana, North Carolina, New York, and Texas. BLC further asserts, no state has denied any ETC petition filed by the Applicant. Application at 11. Staff believes an ETC Application must

be analyzed based on its own merits and in accordance with the Idaho ETC requirements and not on the actions of other state commissions.

Additional FCC requirements for ETC designation are mentioned by BLC in the Application. These are briefly addressed below:

Carrier of Last Resort. BLC is willing to accept carrier of last resort obligations. Application at 9. The Commission does not think it is necessary to require an ETC to assume carrier of last resort obligations as part of the ETC process. Order No. 29841 at 20.

Equal access. BLC will provide equal access to interexchange services. *Id.* In the Order, the Commission stated, “[w]e find that this requirement is based entirely on speculation and would serve no substantive purpose”. Order No. 29841 at 13.

Finally, “BLC asserts its willingness and ability to comply with all rules and regulations that the PUC may lawfully impose upon Applicant’s provision of service contemplated by this Application.” *Id.*

The need to provide greater clarity in the ETC process and developing uniform requirements were the main objectives for adopting new ETC requirements by the FCC and this Commission. Order No. 29841 at 21. Many companies in Idaho were granted ETC designation before the Commission adopted the new ETC requirements outlined in the Order. The adoption of the ETC annual reporting requirements, however, ensures that all ETCs will be treated equally. BLC’s lack of a two-year network improvement plan not only fails the ETC designation requirement, but without an improvement plan, BLC would also fail the ETC annual reporting requirement set forth in the Order that all ETC companies must satisfy. This position is supported by the FCC determination that those carriers previously designated as ETCs or with ETC applications pending on the effective date of the new FCC Rules will be required to show that they meet the eligibility requirements by October 1, 2006. 47 C.F.R. § 54.202(b). The Idaho Commission, therefore, determined that all carriers that file ETC applications after the date of the Order and all carriers previously granted ETC status by this Commission shall demonstrate that they comply with the additional eligibility requirements included herein. Order No. 29841 at 14.

SUMMARY AND RECOMMENDATIONS

After careful review of the Application and the Idaho ETC designation requirements, Staff does not believe that BLC has made a compelling argument to satisfy the public interest argument. Unlike a wireless service provider or a facility-based company, Staff does not believe

a reseller of wireline services offers anything new or provides any unique advantages to the Idaho consumers, including the low income customers. BLC failed to carry the burden of proof in demonstrating the unique advantages and disadvantages of the Applicant's service offering. More importantly, the Application does not fully address all of the Order's ETC designation requirements, most notably the Ability to Remain Functional in an Emergency or the Two-Year Network Improvement Plan. BLC asserts that they intend to serve the credit-challenged and low income consumers in Idaho. The Company, however, does not show evidence of this pent up demand, or how it will satisfy this demand or need in a manner that cannot be met by the ILEC or other CETCs in the designated service area. For these reasons, Staff recommends the Commission deny the ETC Designation Application of BLC Management LLC dba Angles Communication Solution.

Respectfully submitted this 19th day of June 2009.



Neil Price
Deputy Attorney General

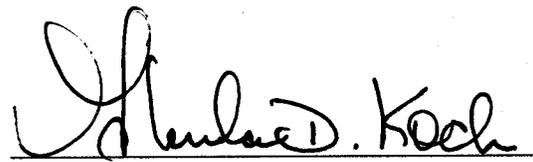
Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 19TH DAY OF JUNE 2009, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. BLC-T-09-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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