

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
DIRECT COMMUNICATIONS STAR WEST,) **CASE NO. DCS-T-05-01**
INC. FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
PROVIDE LOCAL EXCHANGE SERVICES) **ORDER NO. 30116**
WITHIN THE STATE OF IDAHO)

On August 9, 2005, Direct Communications Star West, Inc. (“Direct” or “Company”) filed an Application for a Certificate of Public Convenience and Necessity (CPCN) with the Commission. On July 7, 2006, the Commission issued a Notice of Application and Modified Procedure requesting comments from interested parties. Order No. 30094. Comments were submitted by Commission Staff and Qwest Corporation.

THE APPLICATION

In its Application, Direct stated that it currently provides broadband and dial-up Internet access to over 3,000 residents and businesses in southeastern Idaho. Direct intends to provide Voice over Internet Protocol (VoIP) telecommunications services to its current customers and to potential customers in areas currently serviced by Qwest and Direct Communications Rockland, Inc. (“Rockland”). The Company and Rockland, a Title 61 wireline carrier in southeastern Idaho, are affiliated companies and share certain identical directors and officers.

Direct is an Idaho corporation with corporate headquarters in Rockland, Idaho. The Company has a Certificate of Incorporation dated February 23, 1993, and also a Certificate of Good Standing issued by the Idaho Secretary of State on June 3, 2005. The Company has provided financial information and the appropriate contact information for its registered agent for service of process within Idaho. The Company also filed a revised illustrative tariff on June 29, 2006.

COMMENTS

Staff Comments

Staff reviews all requests for a CPCN pursuant to *Idaho Code* § 62-604(b), Procedural Rules 111 and 112, and Procedural Order No. 26665. Through its review of the

Application and numerous discussions with the Company, Staff determined that the Company's filing complies with the requirements of the Commission. However, Staff noted that the Company indicated in its Application that Direct will compete with Rockland and Qwest. Rockland is the Incumbent Local Exchange Carrier (ILEC) within the service territory and receives federal and state universal service funding. *Idaho Code* §§ 62-603(6) and 62-610. While this competitive arrangement is "highly unusual," Staff did not believe it to be cause for denial of the Company's Application. Staff Comments at 2. Staff, however, did believe that some monitoring may be warranted to avoid any possible conflict between the companies. In its Application the Company stated that it understands and agrees to comply with all Commission rules (or request waivers for those believed to be inapplicable). Application at 6. Staff maintained that the Company possesses the requisite financial, managerial and technical qualifications necessary to operate as a provider of telecommunications services.

Based on its review of the Application, Staff recommended approval of the Application with a waiver of the escrow account requirement until such time as the Company decides to collect deposits. In the future, should the Company decide to collect deposits, Staff recommended that the Company be ordered to comply with the escrow requirement as well as the Commission's Rules for paying interest on deposits.

Qwest Comments

Qwest expressed concern regarding the effect of granting Direct's Application on rural telecommunications competition in general, and in particular on customers of Direct Communications Rockland and Idaho customers who pay into the Idaho Universal Service Fund (USF). Qwest commented that rural telephone companies are currently afforded certain protections against competition. *Idaho Code* §§ 62-602(6). "If rural companies such as Rockland are now open to competition from non-regulated affiliates, Qwest submits that the time has come to withdraw all special competitive protections that have sheltered these companies." Qwest Comments at 3. Qwest acknowledged that the Idaho Legislature maintains authority to enact or repeal statutes relevant to such protections, but recognized that the Commission plays an important role in implementing competition in rural areas. *Id.*

Qwest also commented on the Company's stated intention to compete with Rockland. Qwest believes that Rockland customers may abandon Rockland service if they elect to take service from Direct. If Direct replaces Rockland as a service provider, Rockland will

likely need to seek additional sources of revenue. These additional sources could be a rate increase from remaining customers or an increased draw from the Idaho USF. *Id.* at 4.

Qwest stated that it may be appropriate for the Commission to “impose additional financial reporting and cost accounting requirements” on Rockland and the Company. *Id.* at 2. It suggested that the Commission monitor the effects of competition between Rockland and the Company.

COMMISSION FINDINGS

Based upon our review of the Application and the comments in this case, the Commission finds that the information contained in Direct’s Application satisfies the requirements of the Commission’s Rules and Procedural Order No. 26665. Thus, we approve Direct’s Application for a Certificate of Public Convenience and Necessity to allow the Company to provide VoIP telecommunications services throughout Qwest’s and Rockland’s respective service territories within the State of Idaho. We further find it reasonable to waive the requirement for Direct to possess an escrow account until such time as it begins to collect deposits from its customers.

We also recognize that Qwest raised interesting issues in this case. In particular, Direct will compete with a sister company, Rockland, a rate-regulated Title 61 ILEC. While the two companies employ different technologies, they will both offer dial-up services. Qwest asserted that competition between Direct and Rockland may adversely affect Rockland’s revenues, and might result in Rockland seeking a rate increase or additional USF support. Although these events might occur in the future, we do not need to address these issues now. Our decision today is whether to issue a Certificate to Direct. The Commission will watch the situation with interest to see how it develops. At this time, the Commission does not deem it necessary to impose additional financial reporting and cost accounting requirements on Direct; however, nothing in this Order waives our authority to impose such requirements in the future.

CONCLUSIONS OF LAW

This Commission has jurisdiction over the Company pursuant to *Idaho Code* § 62-604. This Commission has jurisdiction to issue a Certificate of Public Convenience and Necessity pursuant to *Idaho Code* § 62-604(b).


ORDER

IT IS HEREBY ORDERED that the Application of Direct Communications Star West, Inc. is granted and the Company is issued a Certificate of Public Convenience and Necessity to provide broadband and dial-up Internet access to residents and businesses in the service territories of Qwest Corporation and Direct Communications Rockland, Inc.

IT IS FURTHER ORDERED that the requirement to possess an escrow account is waived until such time as Direct begins to collect deposits from its customers.

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 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 *21st* day of August 2006.



PAUL KJELLANDER, PRESIDENT

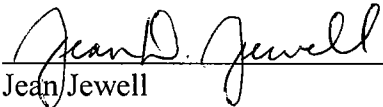


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean Jewell
Commission Secretary

O:DCS-T-05-01_cg2