

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 1283

In the Matter of)
)
LIGHTSPEED NETWORKS, INC.)
)
Application for a Certificate of Authority)
to Provide Telecommunications Service in)
Oregon and Classification as a Competitive)
Telecommunications Provider.)

RULING

**DISPOSITION: MOTION TO DISMISS GRANTED IN PART;
PROCEDURAL SCHEDULE ADOPTED**

Guy Alvis protests Lightspeed Networks, Inc.'s (LS Network) application for authority to provide competitive telecommunications service in Oregon. LS Networks contends that the objections raised by Mr. Alvis are not relevant to this proceeding and that his protest and participation in this proceeding should be dismissed.

Background

These facts, taken from LS Networks' motion to dismiss, are not disputed:

1. LS Networks is a newly incorporated Oregon corporation created to provide telecommunications services.
2. LS Networks acquired certain assets of NoaNet Oregon after LS Networks purchased an outstanding loan that NoaNet Oregon had with its financing company, CFC.
3. LS Networks did not acquire NoaNet Oregon in its entirety and did not assume the liabilities of NoaNet.
4. After the foreclosure, some, but not all employees of NoaNet Oregon were offered employment by LS Networks. Mr. Alvis was one of the employees who was not offered employment.
5. Mr. Alvis has an employment agreement with NoaNet of Washington. There is a dispute between the parties as to whether Mr. Alvis' employment agreement with NoaNet Washington was transferred to and assumed by NoaNet Oregon.

Motion to Dismiss

LS Networks contends that Mr. Alvis' arguments are not relevant to whether its application should be granted under ORS 756.020. LS Networks claims that Mr. Alvis' protest simply raises issues about his former agreement with NoaNet of Washington, or speculates about NoaNet Oregon's failure to pay its creditors. LS Networks contends that the Commission should reject Mr. Alvis's attempt to use this application process to seek disputed payments under his employment contract.

In defense of his protest, Mr. Alvis responds that:

the telecommunications marketplace (and the public interest) might be damaged by creating unfair competition if the owners of a corporation (NoaNet Oregon) are allowed to transfer the assets to a new corporation (Lightspeed Networks, Inc.) while abandoning the liabilities owed by NoaNet Oregon through a veil of undisclosed transactions. I feel that it is not in the public interest for the PUC to accept or to facilitate this practice by granting a request for operating authority.

Alvis Response at 1 (July 6, 2005)

Mr. Alvis adds that, if the Commission grants the application, "there is every indication that I will suffer a direct adverse affect caused by the refusal of the "new corporation", Lightspeed, to pay amounts contractually owed to me (and, perhaps, to other creditors)." *Id.*

Ruling

ORS 759.020 governs LS Networks' request to provide telecommunications as a competitive provider. As with any application filed under ORS 759.020, the question presented is whether issuing a certificate to LS Networks will serve the public interest. To make that determination, the Commission will examine whether LS Networks intends to provide service in compliance with applicable laws, Commission rules, and Commission orders related to provision of telecommunications in Oregon.

Of the numerous arguments raised by Mr. Alvis, only one relates to an issue subject to Commission review under ORS 759.020—affiliated interests. In that argument, Mr. Alvis claims that the owners of NoaNet Oregon and LS Networks are substantively identical, and recommends that the Commission should require a comprehensive disclosure of affiliated interests. The Commission requires all applicants to disclose affiliated relationships to ensure that applicant will comply with applicable requirements discussed above.

The remainder of Mr. Alvis' arguments relate to matters outside the Commission's jurisdiction. These arguments—most of which related to Mr. Alvis' private interests—include the following:

- LS Networks' refusal to provide Mr. Alvis documents relating to the creation of LS Networks and the assumption of the CFC Loan to determine whether LS Networks is unfairly extracting value from NoaNet Oregon beyond what it may be reasonably entitled under the original collateral agreements.

- Whether the agreement between LS Networks and NoaNet Oregon was “even-handed”, since the interests of the creditors (including Mr. Alvis) were not represented and a request that this contract be made part of the public record.
- Whether NoaNet Oregon is being fairly compensated so that the interests of creditors (like Mr. Alvis) can be properly addressed.
- Request that the Commission seek copies of any agreements identifying conditions of employment of former NoaNet Oregon employees by LS Networks to determine whether LS Networks was aware that the employment agreements existed and were valid.
- Allegations that NoaNet Washington transferred employment agreements (including Mr. Alvis) to NoaNet Oregon.
- Request that the Commission demand LS Networks to identify all known disputes related to Mr. Alvis’ employment, and produce a schedule of outstanding liabilities on NoaNet Oregon to determine the status of other creditors.

Accordingly, LS Networks’ motion to dismiss is granted in part. Mr. Alvis is granted party status in this proceeding to address issues related to affiliated interests of LS Networks, to the extent that such affiliated relationships bear upon LS Networks’ ability to comply with applicable laws, Commission rules, and Commission orders related to provision of telecommunications service in Oregon. *See* OAR 860-032-0005(7)(d). The remainder of Mr. Alvis’ protest is dismissed.

Remaining Schedule

At the June 20, 2005 prehearing conference, the parties agreed to two alternative procedural schedules that would be used following a Commission decision that either granted or denied LS Networks’ motion to dismiss. Obviously, neither schedule anticipated a partial granting of the motion. Consequently, I adopt the following schedule to be used for the remainder of this docket. First, Staff shall process the application and issue a proposed order recommending Commission approval or denial of application. *See* OAR 860-032-0005(7)(g). Within 15 days of the service of the proposed order, any party may file exceptions. As discussed above, any exceptions filed by Mr. Alvis must be limited to issues related to whether LS Networks has any affiliated relationships that might affect its ability to lawfully provide telecommunications services in Oregon. Within 10 days of service of any exceptions, Staff and any party may file a reply. *Id.* Thereafter, the Commission will issue a final order.

Dated at Salem, Oregon, this 27th day of July 2005.

Michael Grant
Chief Administrative Law Judge