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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

CP 898

CP 392

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

DISPOSITION: CP 898, APPLICATION GRANTED;  
CP 392, ORDER NO. 98-047,  
CERTIFICATE OF AUTHORITY CANCELED.

**Note:** By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

**The Application**

On December 6, 2000, Pilgrim Telephone, Inc., (Applicant) filed with the Commission an application for certification to provide telecommunications service in Oregon as a competitive provider. Applicant seeks to provide intraexchange (local exchange) telecommunications service in areas coextensive with all local exchanges of the telecommunications utilities listed in Appendix A to this order. For this application that is Qwest Corporation (Qwest) and Verizon Northwest, Inc. (Verizon). Applicant also seeks to provide interexchange telecommunications service statewide in Oregon.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone) within all exchanges of the telecommunications utilities listed in Appendix A. Applicant did not request authority to provide non-switched, private line service (dedicated transmission service.) Applicant will operate strictly as a reseller of local exchange service. Applicant may also purchase unbundled network elements (building blocks), as well as finished services for resale, from other certified carriers for intraexchange service.

Applicant also proposes to provide interexchange switched (toll) service statewide in Oregon. Applicant did not request to provide private line service (dedicated transmission

service.) Applicant will operate strictly as a reseller of interexchange service. Applicant may also purchase unbundled network elements (building blocks), as well as finished services for resale, from other certified carriers for interexchange service.

Operator services are part of switched telecommunications service. Applicant will directly provide operator services as defined in OAR 860-032-0001. Applicant will not be an 'operator service provider' as defined in ORS 759.690(1)(d). Commission rule OAR 860-032-0007 and Oregon statute ORS 759.690 establish conditions regarding provision of operator services.

Applicant currently holds a certificate to provide the interexchange switched telecommunications service statewide in Oregon. *See* Order No. 98-047 in docket CP 392. This is the same interexchange service Applicant requests in the current application. Granting duplicate authority is superfluous, and, as such, the authority granted in Order No. 98-047 will be canceled upon granting the authority in the current case.

The Commission served notice of the application on the Commission's telecommunications mailing list on December 12, 2000. The Commission did not receive any protests or requests to be made parties to the proceeding. On January 4, 2001, the Commission received comments from Verizon Northwest, Inc. The comments request the Commission to consider several issues that are not normally examined when granting a certificate of authority. The comments are not a protest, however, and the Commission will address the issues in this order. Verizon filed a request for party status on January 26, 2001, and was granted the request.

Verizon's first issue is the fact that the current certificate held by Applicant "specifically withheld authority to provide intraexchange (local) dial-tone service." The previous certificate was determined to be mistaken in its request for intraexchange authority since such traffic was incidental. This issue is irrelevant to the current application.

Verizon's second issue is threefold. Verizon states that Applicant has not exercised its current authority in Oregon, Applicant's switch is located in Massachusetts, and Applicant has no tariffs or price lists on file with the Commission. A certificate of authority to provide competitive telecommunications in Oregon is just that, authority to provide service, not a directive to provide service. It is not necessary for the company to actually provide service. The location of a company's switch is irrelevant. There is no requirement that a switch must be located in Oregon. The fact that an applicant has no tariffs on file with the Commission is also irrelevant. There is no requirement that tariffs be on file for any competitive provider of telecommunications service.

Verizon's third issue is merely a repeat of the second issue regarding where the switching equipment is located. No further comment is necessary.

Verizon's fourth issue concerns the type of service Applicant currently provides. What an applicant currently offers and what is in the application can be very different. It is not a requirement that an applicant already be offering the service being requested in the application.

Verizon's fifth issue is the fact that Applicant has had requests for operating authority denied in other states. We cannot deny an applicant operating authority merely based on what other states have done. The case cited by Verizon on this issue is particularly irrelevant since the application appears to have been denied based on the fact that the company did not supply tariffs to that Commission. Oregon does not require tariffs or price lists for competitive companies.

Verizon's last two issues are related to specific past associations Verizon has had with Applicant. Verizon alleges that Applicant owes a large sum for services Verizon provided prior to July 1998. Verizon and Applicant currently have an open arbitration docket with this Commission. *See* docket ARB 299. Verizon desires the Commission to require Applicant to prove financial fitness prior to granting a certificate of authority.

Verizon did not file the comments as a protest to invoke a hearing. Oregon is not a "show cause" state where a hearing is automatically scheduled to determine the outcome of an application. The laws regarding granting competitive telecommunications certificates of authority do not require that an applicant prove financial fitness. Applicants are not required to file tariffs or prices lists, nor are they required to actually provide service under any certificate they may have been granted. The Commission is not aware of any customer complaints regarding Applicant's service in Oregon. There is no reason why this applicant should be held to a different standard than any other applicant.

On January 17, 2001, an Administrative Law Judge (ALJ) with the Commission issued a ruling that adopted procedures for processing this docket. The ALJ set a procedural schedule. On February 2, 2001, the Commission Staff (Staff) distributed a proposed order for review by the parties. No exceptions to the proposed order were filed.

The Commission has reviewed the proposed order and the record in this matter. Based on a preponderance of the evidence, the Commission makes the following:

## **FINDINGS AND CONCLUSIONS**

### **Applicable Law**

Applications to provide telecommunications service and for classification as a competitive telecommunications service provider are filed pursuant to ORS 759.020. ORS 759.020 provides that:

(1) No person [or] corporation \* \* \* shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section.

\* \* \* \* \*

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. \* \* \* For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are reasonably available alternatives, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

Applications to provide local exchange (intraexchange) telecommunications service are reviewed pursuant to ORS 759.050, the “competitive zone law.” Under ORS 759.050(2)(a), the Commission may:

Certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certified telecommunications utility, if the commission determines that such authorization would be in the public interest. For the purpose of determining whether such authorization would be in the public interest, the commission shall consider:

- (A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.
- (B) The effect on competition in the local exchange telecommunications service area.

(C) The effect on access by customers to high quality innovative telecommunications service in the local exchange telecommunications service area.

(D) Any other facts the commission considers relevant.

Under ORS 759.050(2)(b), the Commission shall:

Upon certification of a telecommunications provider under paragraph (a) of this subsection, establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider.

Under ORS 759.050(2)(c), the Commission may:

Impose reasonable conditions upon the authority of [the applicant] to provide competitive zone service within the competitive zone \* \* \* at the time of certification of a telecommunications provider, or thereafter.

Subsection (5)(a) of ORS 759.050 provides that:

Unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations, and modifications of competitive zone services offered by a telecommunications utility in the zone shall not be subject to ORS 759.180 to ORS 759.190 [notice, hearing and tariff suspension procedures], and at the telecommunications utility's discretion, such changes may be made effective upon filing with the commission.

OAR 860-032-0015(1) authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the certificate holder fails to comply with the terms and conditions of the certificate.

### **Designation as a Competitive Provider**

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities listed in Appendix A, provide the same or similar local exchange services in the local service area requested by Applicant. AT&T, WorldCom, Sprint Communications, Qwest Corporation (Qwest), formerly U S WEST Communications, Inc., Verizon Northwest, Inc. (Verizon), formerly GTE Northwest Incorporated, and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at

comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

### Conditions of the Certificate

There are several conditions listed in the application. Oregon Administrative Rules relating to certificates of authority are generally included in OAR chapter 860, division 032. Conditions applicable to certificate holders include, but are not limited to the following: OAR 860-032-0007, 860-032-0008, 860-032-0011, 860-032-0012, 860-032-0013, 860-032-0015, 860-032-0045, 860-032-0060, 860-032-0090, and 860-032-0095. The conditions listed in the application and those contained in Oregon Administrative Rules are adopted and made conditions of this certificate of authority. A condition of this certificate of authority is that Applicant shall comply with applicable laws, Commission rules, and Commission orders related to provision of telecommunications service in Oregon.

The Commission first applied the competitive zone law, ORS 759.050, in dockets CP 1, CP 14, and CP 15. After full evidentiary hearings and consideration of the public interest criteria set forth in ORS 759.050(2)(a), the Commission designated three competitive providers of switched local exchange services as alternate exchange carriers or competitive local exchange carriers (CLECs) in the Portland metropolitan area. *See* Order No. 96-021. The Commission subsequently applied those findings and conclusions to dockets CP 132, CP 139, and CP 149, and certified two CLECs to provide switched local exchange services in areas located throughout the state.

The Commission takes official notice of the record in dockets CP 1, CP 14, and CP 15.<sup>1</sup> In Order No. 96-021, the Commission established conditions applicable to CLEC certificates. Since Applicant proposes to offer local exchange service, it seeks certification as a CLEC. Pursuant to ORS 759.050(2)(c) and Order No. 96-021, Applicant as a CLEC shall comply with the following conditions:

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications utilities, competitive providers, and cooperative corporations that have been issued a certificate of authority by the Commission.
2. Whenever Applicant terminates intrastate long distance traffic directly or indirectly from interexchange carriers or from its own toll network to its end user customers, Applicant shall contribute to the Oregon Customer Access Fund (OCAF), or its equivalent, in accordance with provisions of the Oregon Customer Access Plan (OCAP) or any successor plan approved by the Commission. Applicant shall contribute using rates approved by the Commission on intrastate terminating carrier common line access minutes, or on any other basis determined by the Commission. Applicant may not participate

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<sup>1</sup> Under OAR 882-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

in (i.e., receive money from) pooling arrangements established under the OCAP or any successor plan unless authorized by the Commission.

3. Applicant shall comply with the Oregon Exchange Carrier Association's (OECA) informational and operational needs as specified by the OCAP or any successor plan approved by the Commission.
4. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to make certain that all users of their services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' voice and dialable Automatic Number Identification (ANI) telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point (PSAP). Applicant shall work with each 911 district and lead 911 telecommunications service provider to develop database comparison procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.
5. Applicant shall not take any action that impairs the ability of other certified telecommunications utilities, competitive providers, or cooperative corporations to meet service standards specified by the Commission.
6. At the request of the Commission, Applicant shall conduct and submit to the Commission traffic studies regarding traffic exchanged with telecommunications service providers and other entities designated by the Commission.
7. For purposes of distinguishing between local and toll calling, applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.
8. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.
9. Applicant shall comply with universal service requirements as determined by the Commission.

10. Any obligation regarding interconnection between Applicant and the telecommunications utilities listed in the Appendix to this order shall be governed by provisions of the Telecommunications Act of 1996 (the Act), including but not limited to sections 251 and 252 of the Act (47 USC §§ 251 and 252), as well as the applicable rules and regulations of the Federal Communications Commission and this Commission implementing the Act. Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or the Commission modifies the principles established in Order No. 96-021.
11. If Applicant provides services to a subscriber who, in turn, resells the services, including operator services, then Applicant and the subscriber must comply with ORS 759.690 and OAR 860-032-0007.
12. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310, 756.320, and 756.350 and OAR 860-032-0008, 860-032-0080, 860-032-0090, and 860-032-0095. By November 1, of each year, the Commission will set the fee level that is to be based on gross retail intrastate revenues for the following calendar year. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
13. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall be responsible to ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each paying retail subscriber at a rate that is set annually by the Commission.

### **Public Interest**

In dockets CP 1, CP 14, and CP 15, Order No. 96-021, the Commission made several public interest findings regarding local exchange competition in general. With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 6 - 21, entered pursuant to ORS 759.050(2)(a)(A) - (C). The Commission takes official notice of the record in dockets CP 1, CP 14, and CP 15.<sup>2</sup>

Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Pilgrim

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<sup>2</sup> Under OAR 882-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

Telephone, Inc., to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the telecommunications utilities listed in Appendix A, as described in the application.

This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act (47 USC § 251, 252) with regard to the telecommunications utilities corporations in this docket.

### **Competitive Zones**

All the exchanges of the telecommunications utilities listed in the Appendix to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

### **Pricing Flexibility**

With regard to the general factual conclusions relevant to this proceeding and intraexchange, switched telecommunications service, the Commission adopts the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 82 and 83, entered pursuant to ORS 759.050(5)(a) to (d). The telecommunications utilities listed in Appendix A, will gain pricing flexibility for intraexchange, switched service on an exchange-by-exchange basis under ORS 759.050(5) if:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service;
2. The telecommunications utility files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff; and
3. Staff notifies the Commission that a mutual exchange of traffic exists between the telecommunications utility and an authorized CLEC, including but not limited to, Applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange.

(a) As used in paragraph 3 above, "mutual exchange of traffic" means a mutual exchange of traffic between the telecommunications utility and the CLEC within the telecommunications utility's exchange.

(b) As used in paragraph 3 above, for a CLEC who is a reseller (i.e., a CLEC does not use its own lines or switches to provide the particular service at issue), a "mutual exchange of traffic" exists when the CLEC orders and receives one service, at a wholesale rate, from the telecommunications utility for resale pursuant to a certificate granted under ORS 759.050.

Qwest has satisfied requirement No. 2, above. *See* Order No. 96-277, docket UT 130. Verizon has satisfied requirement No. 2, above. *See* Order No. 96-278, docket UT 129.

## ORDER

IT IS ORDERED that:

1. The application of Pilgrim Telephone, Inc. to provide intraexchange switched service and to provide interexchange switched (toll) service, as described in the application, is in the public interest and is granted with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the local exchanges of the telecommunications utilities listed in Appendix A. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchanges of the telecommunications utilities listed in Appendix A are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utilities listed in Appendix A shall be governed by the provisions of the Telecommunications Act of 1996 (the Act), including but not limited to sections 251 and 252 of the Act (47 USC §§ 251 and 252), as well as the applicable rules and regulations of the Federal Communications Commission and this Commission implementing the Act. Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or the Commission modifies the principles established in Order No. 96-021.
5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act (47 USC § 251 or 252) with regard to the telecommunications utilities in appendix to this order.
6. The telecommunications utilities listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.

7. Pursuant to ORS 759.050(2)(c), Applicant shall comply with Commission imposed universal service requirements as a condition of authority to provide local exchange service.
8. The certificate of authority granted to Pilgrim Telephone, Inc. by Order No. 98-047, dated February 2, 1998, docket CP 392, is canceled.

Made, entered, and effective \_\_\_\_\_.

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**William G. Warren**  
Director  
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

APPENDIX A

CP 898

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS  
UTILITIES LISTED BELOW

**Telecommunications Utilities Not Exempt Pursuant to ORS 759.040**

Qwest Corporation, formerly U S WEST Communications, Inc.  
Verizon Northwest, Inc., formerly GTE Northwest Incorporated

**Telecommunications Utilities Exempt Pursuant to ORS 759.040**

None

ORDER NO.

PAGE 1 OF 1