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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

CP 1045

CP 498

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

DISPOSITION: CP 1045, APPLICATION GRANTED; and
CP 498, ORDER NO. 98-483, 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 March 27, 2002, ICG Telecom Group, Inc., (Applicant or ICG) 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 exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order. 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), and non-switched, private line service (dedicated transmission service) within all exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order. Applicant will operate as a reseller and as a facilities based provider of local exchange service. Applicant may construct its own lines or transport facilities for

intraexchange service. Applicant may purchase unbundled network elements, as well as finished services for resale, from other certified carriers for intraexchange service.

Applicant also proposes to provide interexchange switched service (toll) and private line service (dedicated transmission service) statewide in Oregon. Applicant will operate as a reseller and as a facilities based provider of interexchange service. Applicant may construct its own lines or transport facilities for interexchange service. Applicant may purchase unbundled network elements, as well as finished services for resale, from other certified carriers for interexchange service.

Operator services are part of switched telecommunications service. Applicant will not 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 has a certificate of authority to provide intraexchange service in exchanges of Qwest Corporation, Verizon Northwest Inc., CenturyTel of Oregon, and United Telephone Company of the Northwest. Applicant is also authorized to provide interexchange service statewide in Oregon. *See* Order No. 98-483, docket CP 498. Applicant now requests the same authority plus authority to provide intraexchange service in additional areas. With the granting of this application, Applicant's current certification becomes superfluous. Therefore, the Commission will cancel the certificate of authority granted to ICG Telecom Group, Inc. by Order No. 98-483.

Procedural History

The Commission served notice of the application on the Commission's telecommunications mailing list on April 12, 2002. On April 25, 2002, the Commission received a protest from Oregon Telecommunications Association (OTA) on behalf of some of its member telecommunications utilities and telecommunications cooperatives. OTA did not request a hearing, but stated its belief that the issues raised could be adequately addressed by workshops and briefs.

On May 20, 2002, OTA filed a Conditional Withdrawal of Protest and also filed a Petition for Declaratory Ruling. On May 24, the Administrative Law Judge (ALJ) assigned to this proceeding issued a ruling in which he requested responses to OTA's conditional withdrawal of protest. Applicant, ICG, filed its response on June 3, 2002. On June 7, the ALJ issued a ruling that adopted procedures for processing this docket, and set a procedural schedule.

On June 10, 2002, OTA filed a letter and suggested that an additional condition, beyond those normally imposed on applicants for certificates of authority, be placed on ICG.

On June 14, 2002, the Commission Staff (Staff) distributed a proposed order for review by the parties. On June 20, OTA filed a letter stating that it had no exceptions to the proposed order. ICG filed a letter on June 21 stating that it had no exceptions to the proposed order. On June 25, Commission Staff filed a letter stating that it will not be revising its proposed order.

The Protest

OTA's protest, petition for declaratory ruling, and suggested additional condition center around the use of virtual NPA/NXX (VNXX). The use of VNXX would allow ICG, or any competitive local exchange carrier (CLEC), to have telephone numbers in an incumbent local exchange carrier (ILEC) exchange, but have no physical presence or customers there. The numbers could be assigned to the CLEC's customers who are physically located outside the ILEC's exchange and outside the EAS area associated with that exchange. In that way, ILEC customers could call the VNXX numbers as a local call and yet be connected to the called party in a distant location. Normal toll rates and carrier access charges would be bypassed.

For example, assume ICG acquired a business customer located in Portland, and ICG also was assigned a block of VNXX numbers in the Nehalem exchange. Customers of Nehalem Telephone could dial, as a local call, a VNXX number, and be connected to ICG's business customer in Portland.

OTA's protest states the use of VNXX has a potential for significantly infringing on the access revenues of OTA's members. Based on communications between ICG and OTA members, OTA asserts that ICG intends to do business in Oregon using VNXX arrangements.

The Commission agrees that the issue of using VNXX arrangements is an important issue and should be investigated. The Commission believes that this application proceeding, docket CP 1045, is not the correct procedural forum for such an investigation. The issue is generic and is not specific to the Applicant. There are many CLECs certified to provide service in all telephone exchanges in Oregon, and any of them could use VNXX arrangements.

OTA's suggested, additional condition to be imposed on Applicant would have explicitly prohibited Applicant from provisioning VNXX services within Oregon. At this juncture, it is not apparent whether the use of VNXX arrangements would comply with Conditions of the Certificate numbers 7 and 8 listed further below in this order. This Commission is not willing to impose specific conditions on Applicant, ICG, which are not imposed on other holders of certificates of authority, unless it can be shown there is a factor or situation unique to this Applicant.

We make no determination here regarding the public interest or merits of using VNXX arrangements. And, we make no determination here regarding the merits of the additional condition suggested by OTA. OTA's protest and subsequent filings do not raise issues that

require an evidentiary hearing to address the merits of ICG's application for a certificate of authority.

However, the Commission believes that the issue regarding VNXX arrangements should be investigated. We direct Staff to review and process OTA's petition for declaratory ruling using normal procedures and with reasonable dispatch. At this time, we leave open the question of whether the investigation of VNXX arrangements is better done in a declaratory ruling procedural forum or as a generic investigation.

The Commission has reviewed the proposed order, the exceptions, 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 and cooperative corporations, listed in Appendices A and B, provide the same or similar local exchange services in the local service area requested by Applicant. AT&T, WorldCom, Sprint Communications, Qwest Corporation (Qwest), Verizon Northwest Inc. (Verizon), 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 15.¹ 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 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.

¹ Under OAR 860-014-0050(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.

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 Order No. 93-1850, docket UM 381, the Commission considered the public interest aspects of local exchange competition for dedicated transmission service. 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 of Fact and Opinion in docket UM 381, Order No. 93-1850, at pages 4-6, and 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 UM 381, CP 1, CP 14, and CP 15.

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 ICG Telecom Group, Inc., to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B. Further, it is in the public interest to grant statewide interexchange authority 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 and cooperative corporations in this docket.

Competitive Zones

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

Pricing Flexibility

Cooperative telephone companies are generally not regulated by the Commission for local exchange services, and therefore already have pricing flexibility for local exchange service. Telecommunications utilities which are exempt under ORS 759.040 from the provisions of ORS 759.180 to 759.190 already have pricing flexibility for local exchange service. This order has no effect on any ORS 759.040 exemption. However, if one of those telecommunications utilities loses its ORS 759.040 exemption from provisions of ORS 759.180 to 759.190, for any reason, it will automatically become eligible for an exemption under ORS 759.050(5)(a) to (d), as described below.

In Order No. 93-1850, docket UM 381, the Commission granted pricing flexibility for dedicated transmission service at the same time the Commission granted the certificate of authority. Therefore, the telecommunications utilities listed in Appendix A are granted pricing flexibility for dedicated transmission service in their respective exchanges by this order.

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 ICG Telecom Group, Inc. to provide intraexchange switched service and non-switched dedicated transmission service, and to provide the interexchange switched service (toll) and dedicated transmission service, 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 and cooperative corporations listed in Appendices A and B. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utilities and cooperative corporations listed in Appendices A and B 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 and cooperative corporations listed in appendices 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 authority granted to ICG Telecom Group, Inc., by Order No. 98-483, docket CP 498, entered November 20, 1998, is canceled.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

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 1045

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS
UTILITIES LISTED BELOW

Telecommunications Utilities Not Exempt Pursuant to ORS 759.040

CenturyTel of Eastern Oregon, Inc.
CenturyTel of Oregon, Inc.
Qwest Corporation
United Telephone Company of the Northwest, dba Sprint
Verizon Northwest Inc.

Telecommunications Utilities Exempt Pursuant to ORS 759.040

Asotin Telephone Company
Cascade Utilities, Inc.
Citizens Telecommunications Company of Oregon
Eagle Telephone System, Inc.
Helix Telephone Company
Home Telephone Company
Malheur Home Telephone Company
Midvale Telephone Exchange
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telephone & Telegraph Co.
North-State Telephone Company
Oregon Telephone Corporation
Oregon-Idaho Utilities, Inc.
People's Telephone Company
Pine Telephone System, Inc.
Roome Telecommunications, Inc.
Trans-Cascade Telephone Company

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APPENDIX B

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EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE COOPERATIVE
CORPORATIONS LISTED BELOW

Beaver Creek Cooperative Telephone Company
Canby Telephone Association
Clear Creek Mutual Telephone
Colton Telephone Company
Gervais Telephone Company
Molalla Telephone Company
Monitor Cooperative Telephone Co.
Pioneer Telephone Cooperative
Scio Mutual Telephone Association
St. Paul Cooperative Telephone Association
Stayton Cooperative Telephone Co.

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