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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 1137

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| In the Matter of |) | |
| |) | |
| Capsule Communications Inc. |) | ORDER |
| |) | |
| Application for a Certificate of Authority to Provide |) | |
| Telecommunications Service in Oregon as a |) | |
| Competitive Provider. |) | |

DISPOSITION: GRANTED

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

INTRODUCTION

Capsule Communications Inc. (Applicant) filed the application on January 21, 2003. Applicant requests authority to provide interexchange telecommunications service statewide in Oregon as a competitive provider.

The Commission served notice of the application on the Commission's telecommunications mailing list on February 12, 2003. The Commission did not receive any protests.

Based on the record in this matter, the Commission makes the following:

FINDINGS OF FACT

The Proposed Operation

Applicant will provide intrastate, interexchange, switched telecommunications service (toll) and non-switched, private line service (i.e., dedicated transmission service) statewide in Oregon. Applicant may resell the services of other certified carriers. Applicant did not indicate that it would operate as a facilities based carrier.

Applicant will not directly provide operator services as defined in OAR 860-032-0001. Applicant will not be an “operator services 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 previously held a certificate of authority in Oregon. *See* Order No. 00-242, docket CP 784. It was cancelled for failure to file compliance reports. *See* Order No. 02-743. The company has filed the delinquent reports, paid all fees and is filing this new application.

Applicant is affiliated with Covista, Inc., formerly known as Totaltel, Inc., a provider of long distance toll and long distance private line service as well as local dial tone and local private line service. *See* Order No. 98-026, docket CP 393 and Order No. 99-026, docket CP 548.

OPINION

Applicable Law

ORS 759.020 governs Applicant’s request to provide telecommunications as a competitive provider. Under ORS 759.020(5), the Commission shall classify Applicant as a competitive provider if Applicant demonstrates that its services are subject to competition, or that its customers or those proposed to become customers have reasonably available alternatives. In making this determination, the Commission must consider the extent to which services are available from alternative providers that are functionally equivalent or substitutable at comparable rates, terms and conditions, existing economic or regulatory barriers to entry, and any other factors deemed relevant.

OAR 860-032-0015 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.

Resolution

Existence of Alternatives. AT&T, WorldCom, Sprint Communications Company, Qwest Corporation, and others provide toll and operator services in the service area requested by Applicant.

Suitability of Alternatives. Applicant's customers or those proposed to become customers have reasonably suitable alternatives to Applicant's services. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors.

Barriers to Entry. The level of competition in the market shows that both 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: OARs 860-032-0007, 860-032-0008, 860-032-0011, 860-032-0012, 860-032-0013, 860-032-0015, 860-032-0020, 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.

1. Applicant shall not take any action that impairs the ability of other certified telecommunications services providers to meet service standards specified by the Commission.
2. Applicant shall comply with all conditions listed in the application.
3. Applicant shall pay an annual fee to the Public Utility Commission of Oregon pursuant to ORS 756.310 and 756.320 and OAR 860-032-0095. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
4. Applicant shall pay a quarterly amount to the Oregon Universal Service Fund based on a Commission approved surcharge percentage assessed on all retail telecommunications services sold in Oregon, pursuant to ORS 759.425(4).
5. 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.

CONCLUSIONS

Applicant has met the requirements for a certificate to provide telecommunications service as a competitive provider. The application should be granted.

ORDER

IT IS ORDERED that:

1. The application of Capsule Communications Inc. for authority to provide interexchange switched (toll) and dedicated transmission telecommunications service is granted.
2. Applicant is designated as a competitive telecommunications provider.
3. Applicant may provide authorized services statewide in Oregon.
4. Applicant shall comply with conditions of the certificate.

Made, entered, and effective _____.

John Savage
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 pursuant to applicable law.