

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE COMMISSION, ON ITS)
OWN MOTION, REQUIRING IDT AMERICA,)
CORP. TO SHOW CAUSE WHY ITS)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE LOCAL EXCHANGE)
TELECOMMUNICATIONS SERVICES SHOULD)
NOT BE CANCELED DUE TO ITS)
NONCOMPLIANCE WITH WYOMING LAW)

Docket No. 70106-14-TI-17
(Record No. 14877)

APPEARANCES

For the Staff of the Wyoming Public Service Commission (Commission):
BARBARA TOMLINSON, Executive Assistant, Cheyenne, Wyoming.

For the Department of Revenue (DOR):
ALAN LEMASTER, Appraisal Services Supervisor; JUSTIN McNAMARA, Appraiser,
Cheyenne, Wyoming.

HEARD BEFORE

JOHN S. BURBRIDGE, Assistant Secretary,
presiding pursuant to a *Special Order* of the Commission

ORDER CANCELING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
(Issued February 28, 2018)

This matter is before the Commission upon its own motion requiring IDT America, Corp. (the Company) to show cause why its certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications services in Wyoming should not be canceled due to the Company's noncompliance with Wyoming law as more fully described below. The Commission, having reviewed its files regarding the Company, applicable Wyoming telecommunications law, and otherwise being fully advised in the premises, FINDS and CONCLUDES:

1. The Company is a local exchange telecommunications company as defined by Wyo. Stat. § 37-15-103(a)(vii), subject to the Commission's jurisdiction pursuant to Wyo. Stat. § 37-15-401.

2. The Company failed to: [i] properly file its annual report with the Commission in violation of Wyo. Stat. § 37-2-203(b), and Commission Rule Chapter 3, Section 32; and [ii] failed to meet the DOR reporting requirements in violation of Wyo. Stat. §§ 37-2-106 through 37-2-109, relating to the uniform assessment of public utilities. As a result, the Commission issued a *Show Cause Order and Notice Setting Public Hearing (Show Cause Order)* on November 28, 2017,

directing the Company to appear before the Commission on January 22, 2018, in its hearing room in Cheyenne, Wyoming, and show cause why its CPCN to provide local exchange telecommunications services should not be canceled. The Company was provided an opportunity to correct its non-compliance by contacting the Commission and the DOR regarding the non-compliance. The *Show Cause Order* further advised the Company that failure to correct its non-compliance or to appear at the public hearing would result in the Commission rendering a decision by default against the Company, immediately canceling its CPCN to provide local exchange telecommunications services in Wyoming.

3. On November 21, 2017, the Commission issued its *Special Order Authorizing One Commissioner and/or Presiding Officer to Conduct Public Hearing (Special Order)*.

4. The *Show Cause Order* was served on the Company via certified mail, at its Newark, New Jersey, office on December 4, 2017.

5. On January 22, 2018, pursuant to due notice, the Commission conducted a public hearing in this matter in compliance with the Wyoming Administrative Procedure Act and the Commission's Rules at which the Company was provided the opportunity to appear and present evidence why its CPCN should not be cancelled. No employee, agent or counsel for the Company appeared.

6. Barbara Tomlinson, Commission Staff, appearing at the public hearing and offered testimony regarding her efforts to contact the Company to remind it of its obligation to file an annual report with the Commission. Justin McNamara, DOR appraiser, appeared at the public hearing and offered testimony regarding his efforts to contact the Company to remind it of its DOR reporting requirements.

7. The Commission reviewed the public hearing transcript and thereafter held public deliberations at its February 15, 2018, Open Meeting. As of the time of these deliberations, the Company had not complied with the statutory annual reporting requirements. Commission Staff recommended that the Company's CPCN be revoked and its tariffs canceled due to its non-compliance with Wyoming law. The Commission decided that the Company's CPCN and tariffs should be immediately canceled. The Commission directed preparation of an order consistent with this decision.

8. Wyo. Stat. § 37-2-203(b) provides:

Within a time to be fixed by the commission, every public utility under the jurisdiction of this commission shall file an annual report with the commission, verified by the oath of the president, treasurer or general manager or receiver, if any, of such public utility, or by the person required to file the same. The verification shall be made by said official holding office, at the time of the filing of said report, and, if not made upon the knowledge of the person verifying the same, shall set forth the source of his information and the grounds of his beliefs as to any matters not stated to be verified upon his knowledge. The commission shall prescribe the form of such reports and the character of the information to be contained therein, and may from time to time make such changes and such additions in regard to form

and contents thereof as it may deem proper and each year shall furnish a blank form for such annual reports to every such public utility. Such report shall also cover the period, and be filed at the time prescribed by the commission. The contents of such report and the form thereof shall conform in the case of interstate public utilities as nearly as may be to that required of interstate public utilities under the act of congress entitled "An act to regulate commerce", approved February fourth, eighteen hundred and eighty-seven [1887], and the acts amendatory thereof and supplemental thereto. The originals of said reports subscribed and sworn to as prescribed by law, shall be filed in the office of the commission. The commission may require, by order of any public utility or person, specific answers to questions upon which the commission may need information. If any public utility shall fail to make and file its annual report within the time ordered, or the time extended by the commission, it shall be subject to the penalty as provided for under Wyo. Stat. 37-12-204.

9. Commission Rules Chapter 3, Section 32, provides:

Each utility shall file on or before May 1st of each year an annual report for the preceding calendar year in the form prescribed by the Commission. All annual reports shall be signed by the officer, manager or agent of the utility under whose direction the annual report is prepared.

10. Wyo. Stat. § 37-2-106 provides:

Monies derived from a uniform assessment of persons subject to assessment under Wyo. Stat. 37-2-107, except motor carriers as defined in Wyo. Stat. 31-18-101(a)(x), shall be credited to the public service commission account for the purpose of defraying administrative expenses of the commission with respect to the persons assessed. ...

11. Wyo. Stat. § 37-2-107 provides:

On or before the first day of July of each year the director of revenue shall, by requiring special reports or otherwise, determine the total aggregate amount of the gross Wyoming intrastate retail revenues of all public utilities, entities utilizing public utility facilities in the state to furnish retail utility commodities or services to the public, and providers of telecommunication services, except motor carriers, and those utilities exempted under W.S. 37-2-108, for the preceding calendar year. ...

12. Wyo. Stat. § 37-2-109 provides:

Any person who violates or fails to comply with any provision of this act, or fails, omits, neglects, or refuses to observe or comply with any requirement, direction or decision of the director of revenue relating thereto, or to file any report as may be required by him, within the time specified, shall be subject to a penalty of not more than five thousand dollars (\$5,000.00) for each and every offense.

13. The Commission is persuaded by the testimony at the public hearing that all reasonable efforts were made to contact the Company for the purpose of obtaining its compliance

with the above-described statutes and rules. The Commission concludes that the Company is in violation of Wyo. Stat. § 37-2-203(b) and Commission Rule Chapter 3, Section 32 due to its failure to file its annual report to the Commission. The Commission further concludes that the Company is in violation of Wyo. Stat. § 37-2-106 due to its failure to file its uniform assessment. These violations are further confirmed by the Company's failure to appear at the Show Cause proceedings or attempt to cure its non-compliance. The Company has not shown good cause why it should be allowed to continue to provide local exchange telecommunications services in Wyoming. The Commission concludes that the preponderance of the evidence in this case demonstrates the Company's failure to comply furnishes sufficient evidence to cancel its CPCN and tariffs to provide local exchange telecommunications services in Wyoming. The Commission further concludes, based on the evidence of record, the imposition of a monetary penalty would not serve the public interest.

IT IS THEREFORE ORDERED:

1. Pursuant to the Commission's decision made at the Open Meeting on February 15, 2018, and for good cause shown, the certificate of public convenience and necessity of IDT America, Corp. to provide local exchange telecommunications services in Wyoming is canceled, effective immediately.
2. IDT America, Corp.'s tariffs on file with the Commission are hereby canceled.
3. This *Order* is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on February 28, 2018.

PUBLIC SERVICE COMMISSION OF WYOMING



WILLIAM F. RUSSELL, Chairman



KARA BRIGHTON FORNSTROM, Deputy Chair



ROBIN SESSIONS COOLEY, Commissioner

Attest:



JOHN S. BURBRIDGE, Assistant Secretary

