

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In The Matter of the Application and	)	
Petition of	)	DOCKET UT-020320
	)	
BAK Communications, LLC	)	ORDER AUTHORIZING
	)	REGISTRATION AND
For Registration as a Telecommunications	)	GRANTING PETITION FOR
Company and Classification as a	)	COMPETITIVE
Competitive Telecommunications	)	CLASSIFICATION
Company.	)	
.....	)	

**BACKGROUND**

- 1 By petition filed March 13, 2002, in Docket UT-020320, BAK Communications, LLC (BAK), seeks registration as a telecommunications company and classification as a competitive telecommunications company pursuant to RCW 80.36.350 and RCW 80.36.320. BAK also filed an initial price list.
  
- 2 BAK proposes to register with the Commission as a telecommunications company to offer the services specified in Exhibit A of its application. Services specified in Exhibit A but not included in its initial price list may not be offered until applicant amends its price list to include the description of service with rates and charges. In support of its petition, BAK asserts that its services compete with other interexchange carriers telecommunications services. BAK states that customers have readily available, equivalent alternatives and that there are no captive customers of the Company's services.
  
- 3 BAK is a limited liability company headquartered in Santa Ana, California. Rates, terms, and conditions set forth in the initial price list are structured similarly to rates filed by other interexchange carriers for calls placed in the relevant market.
  
- 4 BAK has provided information showing that it meets the requirements of RCW 80.36.350. Pursuant to statutes and rules governing registration applications and prepaid calling services proposals, BAK has proposed a satisfactory bond agreement for protection of those prepayments. Initially, the bond agreement will be for \$5,000 and will increase proportionally as the outstanding amount of prepayments increases. BAK will notify the Commission at least 30 days prior to terminating its operations, and provide the insurer and the Commission notice in writing and within 24 hours of ceasing its operations with its list of all outstanding account numbers and customer balances.

5 Within 15 days after June 30, 2002, and each calendar quarter thereafter, BAK will be required to submit to the Commission a report containing the information specific to its state of Washington operations. Statements shall continue to be filed within 15 days after each 3-month period thereafter until the applicant is notified in writing by the Commission that such reports are no longer required. Based on this information, BAK will adjust the amount of the bond to ensure compliance with WAC 480-120-058. In addition, Commission Staff may request current Company financial information. After one year's administration of the bond agreement, the reporting requirement may be modified to a semi-annual level, upon request by BAK and authorization by the Commission.

6 BAK shall state an unconditional, money-back guarantee on the prepaid calling card or in supplemental materials provided at the time the prepaid calling card is purchased, and include a statement warning customers to safeguard their cards. If BAK ceases its operations, it must provide refund information to its customers through the company's toll-free phone number for a minimum of six months after ceasing operations. BAK will provide a free call-detail report to customers upon request.

7 Applicant does not propose to collect deposits from customers, provide alternate operator services, or local exchange services.

8 In conjunction with classification, the Company is seeking waiver of:

RCW 80.04.300	Budgets to be filed by companies— Supplementary budgets
RCW 80.04.310	Commission's control over expenditures
RCW 80/04.320	Budget Rules
RCW 80.04.330	Effect of unauthorized expenditure— Emergencies
RCW 80.04.360	Earnings in excess of reasonable rate— Consideration in fixing rates
RCW 80.04.460	Investigation of accidents
RCW 80.04.520	Lease of utility facilities
RCW 80.36.100	Tariff schedules to be filed and open to public
RCW 80.36.110	Tariff changes—Statutory notice—Exception
Chapter 80.08 RCW	Securities (except RCW 80.08.140)
Chapter 80.12 RCW	Transfers of Property
Chapter 80.16 RCW	Affiliated Interests
Chapter 480-80 WAC	Tariffs
Chapter 480-140 WAC	Budgets
Chapter 480-143 WAC	Transfers of Property
Chapter 480-146 WAC	Securities and Affiliated Interests
WAC 480-120-026	Tariffs

WAC 480-120-031	Accounting
WAC 480-120-032	Accounting-Political information and political education activities
WAC 480-120-036	Finance—Securities, affiliated interests, transfer of property
WAC 480-120-046	Services offered
WAC 480-120-131	Reports of accidents

9 Rules invoked include WAC 480-121-061, WAC 480-121-062, WAC 480-121-063, and WAC 480-121-064. Statutes invoked include RCW 80.36.320 and RCW 80.36.350. The ultimate issues are whether BAK should be registered as a telecommunications company, whether it should be classified as a competitive telecommunications company, and the extent to which it should be relieved of regulatory requirements to which it would otherwise be subject.

10 This matter was brought before the Commission at its regularly scheduled open meeting on April 10, 2002. The Commissioners, having been fully advised in the matter, and having determined the following order to be consistent with the public interest, directed the Secretary to enter the following order and related provisions.

#### FINDINGS OF FACT

- 11 (1) BAK filed an application for registration March 13, 2002, as a telecommunications company and a petition for classification as a competitive telecommunications company pursuant to the provisions of RCW 80.36.350 and RCW 80.36.320, to provide the services specified in Exhibit A of its application.
- 12 (2) As to form, the application and petition meet the requirements of RCW 80.36.350 and RCW 80.36.320, and comply with the Commission's rules and regulations.
- 13 (3) The registration of BAK as a telecommunications company is not inconsistent with the public interest.
- 14 (4) In this proceeding, the Commission in no way endorses the financial viability of applicant nor the investment quality of any securities it may issue.
- 15 (5) Alternative providers of service to that of BAK, include but are not limited to, Ameritech Communications International, Inc., Transcommunications, Inc., Verizon Northwest, Inc., MCI WorldCom Communications, Inc., and Sprint Communications Company L.P. All services are fully available from alternative providers in the relevant market.

- 16 (6) The relevant market is the state of Washington.
- 17 (7) BAK has no captive customer base.
- 18 (8) BAK should be permitted to provide services under price list.
- 19 (9) BAK requested waivers of certain laws and rules relating to telecommunications services. The laws and rules for which waivers should be granted are listed in Appendix A, incorporated by this reference and made a part of this Order.

### CONCLUSIONS OF LAW

- 20 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this registration application and classification petition and BAK.
- 21 (2) The services offered are subject to effective competition.
- 22 (3) BAK should be registered as a telecommunications company pursuant to RCW 80.36.350, and classified as a competitive telecommunications company pursuant to RCW 80.36.320(1).
- 23 (4) BAK should be permitted to provide services under price lists promulgated under RCW 80.36.320(2). These services shall not include collecting deposits from customers, providing alternate operator services, or local exchange services.
- 24 (5) BAK should be granted waivers of the laws and rules listed in Appendix A.

### ORDER

#### THE COMMISSION ORDERS:

- 25 (1) Effective on the date of this Order and subject to any conditions imposed, the Commission approves the application of BAK Communications, LLC, requesting an order authorizing registration as a telecommunications company to provide service to the public in this state.
- 26 (2) The Commission approves the petition of BAK Communications, LLC, for classification as a competitive telecommunications company and grants a waiver of the laws and rules listed in the attached Appendix A.

- 27 (3) BAK Communications, LLC, shall be permitted to provide services under price list.
- 28 (4) Registration of BAK Communications, LLC, as a telecommunications company shall not be construed as an endorsement of financial viability or of the investment quality of any securities it may issue.
- 29 (5) As a telecommunications company providing service to the public in this state, BAK Communications, LLC, is subject to the jurisdiction of this Commission under the provisions of Title 80 RCW and all rules and regulations adopted by the Commission.
- 30 (6) BAK Communications, LLC, is authorized to offer rates and services pursuant to the price list in the format prescribed by the Commission. Services specified in Exhibit A but not included in its initial price list may not be offered until applicant amends its price list to include the description of service with rates and charges. Any price list filed by BAK Communications, LLC, and subsequent changes to these price lists, shall become effective only after ten days' notice to the Commission and to customers. In the event of a price list reduction or of a change in terms and conditions that do not have rate impact, personal notice to customers is not required. To comply with the statutory notice requirement, BAK Communications, LLC, may publish notice of price reductions or changes in terms and conditions of service that do not have rate impact by a display advertisement in such newspaper(s) as are geographically situated to be circulated over the Company's service area.
- 31 (7) The bond agreement filed by BAK Communications, LLC, in the amount of \$5,000 is sufficient to initiate operations. BAK Communications, LLC, shall adjust the amount of the bond to ensure compliance with WAC 480-120-058. As part of the bond agreement and in the event the Company ceases operations, BAK Communications, LLC, shall provide notice, in writing and within 24 hours, to the insurer and the Commission to include a list of outstanding account numbers and balances.
- 32 (8) Within 15 days after, June 30, 2002, and each calendar quarter thereafter, BAK Communications, LLC, shall submit to the Commission a report containing the following information specific to its state of Washington operations: (a) total outstanding prepaid calling card balance at the beginning of the reporting period; (b) dollar amount of prepaid calling cards sold during the reporting period; (c) depleted usage of prepaid calling cards during the reporting period; and (d) total outstanding prepaid calling card balance at the end of the reporting period. Applicant shall continue to file statements within 15 days after each 3-month period thereafter until notified in writing by the Commission that such reports are no longer required. Based on this

information, BAK Communications, LLC, shall adjust the amount of the bond to ensure compliance with WAC 480-120-058. In addition, Commission Staff may request, and applicant shall supply, current company financial information. After one year's administration of the bond agreement, the reporting requirement may be modified to a semi-annual level, upon request by BAK Communications, LLC, and authorization by the Commission.

- 33 (9) BAK Communications, LLC, shall state an unconditional money-back guarantee on the face of the prepaid calling card or on supplemental materials that must be provided at the time the prepaid calling card is purchased with a statement warning customers to safeguard their cards.
- 34 (10) In the event the Company ceases operations, BAK Communications, LLC, must provide refund information to its customers on the company's toll-free phone number for a minimum of six months.
- 35 (11) BAK Communications, LLC, shall provide a free call-detail report to customers upon request.
- 36 (12) BAK Communications, LLC, is not authorized to collect deposits from customers, provide alternate operator services, or local exchange services.
- 37 (13) The Commission retains jurisdiction over the subject matter and the Company to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this 10th day of April, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary

**APPENDIX A**

RCW 80.04.300	Budgets to be filed by companies--Supplementary budgets
RCW 80.04.310	Commission's control over expenditures
RCW 80.04.320	Budget rules
RCW 80.04.330	Effect of unauthorized expenditure--Emergencies
RCW 80.04.360	Earnings in excess of reasonable rate--Consideration in fixing rates
RCW 80.04.460	Investigation of accidents
RCW 80.04.520	Lease of utility facilities
RCW 80.36.100	Tariff schedules to be filed and open to public
RCW 80.36.110	Tariff changes--Statutory notice--Exception
Chapter 80.08 RCW	Securities (Except RCW 80.08.140, State not obligated)
Chapter 80.12 RCW	Transfers of Property
Chapter 80.16 RCW	Affiliated Interests
Chapter 480-80 WAC	Tariffs, Price Lists, and Contracts (except 480-80-035 Price Lists and 480-80-325 Contract for Service)
Chapter 480-140 WAC	Budgets
Chapter 480-143 WAC	Transfers of Property
Chapter 480-146 WAC	Securities and Affiliated Interests
WAC 480-120-026	Tariffs
WAC 480-120-031	Accounting
WAC 480-120-032	Accounting-Political information and political education activities
WAC 480-120-036	Finance--Securities, affiliated interests, transfer of property
WAC 480-120-043	Notice to the Public of Tariff Changes
WAC 480-120-046	Services offered
WAC 480-120-131	Reports of accidents
WAC 480-120-541	Access charges
WAC 480-120-542	Collective consideration of Washington intrastate rate, tariff, or service proposals
WAC 480-120-544	Mandatory cost changes for telecommunications companies