

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs**

**RESOLUTION T-17344
February 1, 2012**

RESOLUTION

RESOLUTION T-17344. Disposition of Protest of Straitshot RC, LLC of U.S. TelePacific (U-5721-C) Advice Letter No. 314, Filed May 6, 2011, Suspending the Written Disposition of the Communications Division and directing parties to the proposed transaction to file an application seeking Commission approval of the proposed acquisition of assets.

SUMMARY

This Resolution suspends the Written Disposition of the Communications Division regarding U.S. TelePacific Advice Letter 314, and directs the parties to the proposed acquisition of IXC Holdings, Inc. by TelePacific's subsidiary, TelePacific Managed Services to file an application seeking Commission approval of the proposed acquisition of assets.

BACKGROUND

U.S. TelePacific (TelePacific) filed Tier III Advice Letter (AL) 314 on May 6, 2011, pursuant to General Order (G.O.) 96-B, Decisions (D.) 04-10-038, D.97-06-096, and D.94-05-051, to notify the Commission of its proposed acquisition of the assets, including the customer base, Certificate of Public Convenience and Necessity ("CPCN") of IXC Holdings, Inc. (U-6647-C) ("IXCH, Inc.") by TelePacific's wholly-owned subsidiary, TelePacific Managed Services ("TMS").

On May 27, 2011, Straitshot RC LLC and Straitshot Communications, Inc. (collectively, "Straitshot"), submitted a timely protest to AL 314. The protest was filed pursuant to G.O. 96-B General Rule 7.4.2. (3), alleging that TelePacific failed to disclose in Advice Letter 314 pending litigation in the United States District Court for the Western District of Washington in Washington State (hereafter referred to as the Washington District Court). According to Straitshot, the alleged failure to reveal the pending litigation represents a material error or omission in the Advice Letter. Straitshot alleges a series of unlawful schemes agreed to and perpetuated by IXCH, Telekenex, Inc. (Telekenex), IXCH/Telekenex officers and controlling owners Brandon Chaney and Anthony Zabit,

and other individual defendants (collectively, the “IXCH/Telekenex defendants”) for the purposes of the following: 1) stealing Straitshot’s trade secrets and confidential customer information, 2) making a series of misrepresentations to Straitshot’s customers, and 3) using the stolen trade secrets and confidential customer information to destroy Straitshot’s business and coerce its customers into long-term contracts that favored IXCH/Telekenex. Straitshot is seeking damages in the amount of \$17.5 million, which is the alleged value of the Straitshot enterprise destroyed by IXCH/Telekenex.

The original litigation was between Straitshot and Telekenex until Straitshot discovered that in August 2010, the assets of Telekenex had been moved to another corporate entity, IXCH, which is owned by, and under the control of Brandon Chaney and Anthony Zabit. Pursuant to a request from Straitshot, on December 8, 2010, the Washington District Court allowed Straitshot to add IXCH as a party to the litigation. Telekenex had notified the Commission of this transfer in Advice Letter 71, dated June 3, 2010. Straitshot maintains that through this transfer of assets, the Telekenex defendants Brandon Chaney and Anthony Zabit attempted to leave the liabilities of Telekenex, including the \$17.5M lawsuit, in the essentially insolvent company, Telekenex.

Straitshot maintains that granting the proposed transfer of assets from IXCH, Inc. to TelePacific would have the following effects: 1) potentially eliminate Straitshot’s ability to collect a judgment should it prevail in the afore-mentioned litigation, and 2) be unjust and unreasonable.

Straitshot further maintains that TelePacific’s failure to disclose in AL 314 the pending litigation in Washington state constitutes an error and omission under G.O. 96-B §7.4.2(3) and is grounds for protest.

Straitshot requests that the Commission both 1) not permit AL 314 to become effective, and 2) disapprove the Proposed Transfer, or in the alternative, approve the Proposed Transfer only on the express condition that TelePacific assume full financial responsibility for paying Straitshot any and all judgments and other relief awarded to Straitshot in the Litigation between Straitshot and IXCH in Washington State. In addition, Straitshot asks that, at the very least before granting permission or approval in response to AL 314 and the Proposed Transfer, the Commission should fully investigate and conduct an evidentiary hearing regarding the IXCH/Telekenex Defendants’ failure to disclose the Litigation to the Commission, their misrepresentations to consumers, and the unjust and unreasonable effects that the Proposed Transfer could cause.

On June 3, 2011, TelePacific responded to Straitshot’s protest recommending that the Commission disregard the protest because it does not raise issues that the Commission can or should address. Specifically, TelePacific maintains that Telekenex is not a party to the transaction. The Commission approved the transfer of Telekenex assets to IXCH

over a year ago, TelePacific notes, and Telekenex is no longer a certificated utility under the Commission's jurisdiction. TelePacific also offers the following arguments:

- 1) the courts in Washington state provide the appropriate venue for Straitshot to resolve its complaints against Telekenex;
- 2) the addition of IXCH to the Washington State litigation does not adversely affect the public interest in carrying out the proposed transfer;
- 3) approving the transaction will be of benefit to Straitshot because IXCH will receive compensation from the transaction which may put Straitshot in a better position to collect any judgment awarded by the Washington Court;
- 4) omitting reference to the Washington District Court litigation was not a deviation from the Commission's rules with respect to providing information relevant to TelePacific's acquiring IXCH's assets and customers because D.04-10-038 does not provide clear guidance on the scope of litigation to be disclosed; and
- 5) allegations about complaints filed against the IXCH/Telekenex defendants are without merit. To the best of TelePacific's knowledge, the companies referenced in the Straitshot's response to AL 314 are cases concerning Telekenex, Inc. and were filed prior to IXCH acquiring the assets and customers of Telekenex. As such, TelePacific asserts, the Commission's rules do not require TelePacific and TMS to disclose such actions.

On July 15, 2011, pursuant to G.O. 96-B §7.6.1, the Communications Division (CD) issued a Written Disposition of the protest of Straitshot informing Straitshot of the approval of AL 314 and that AL 314 was deemed effective pursuant to Decision (D.) 04-10-038, Appendix A, Paragraph 1 and 2.

On July 22, 2011, Straitshot made a timely request for Commission review of the July 15, 2011 CD Written Disposition of its protest pursuant to G.O. 96-B General Rule 7.7.1. Straitshot alleged that CD's disposition of AL 314 is "unlawful and erroneous," and "will harm consumers and the public interest." Straitshot maintains that the Written Disposition deprived them of due process because the disposition did not state the basis for rejecting the protest, and that it does not discuss or evaluate the substance of the protest. Straitshot argues that the Commission should review and reverse CD's disposition of AL 314. Straitshot maintains that the IXCH/Telekenex Defendants, including 122 Telekenex employees and one of the principal owners, Brandon Chaney, intend to continue their involvement if the transfer goes forward. Straitshot further alleges that the continued involvement by IXCH/Telekenex Defendants will perpetuate IXCH's improper practices, such as fraud against Straitshot and other customers.

On July 29, 2011, TelePacific responded to Straitshot's request for Commission review of the CD Written Disposition of AL 314. TelePacific countered that a) D.04-10-038 governs the type of acquisition and/or transfer transaction before the Commission, and G.O. 96-B rules to the contrary are inapplicable, b) CD correctly approved the AL, based on the framework in D.04-10-038, governing acquisitions, and c) Straitshot's request was improper because D.04-10-038 does not provide for a Resolution Request. TelePacific claims that G.O. 96 – B General Rule 7.7.1 does not apply to Advice Letter 314, but if it were to apply, the Commission can, and should, grant an exception to the rule pursuant to G.O. 96-B General Rule 1.3.

DISCUSSION

Under the Advice Letter process adopted in G.O. 96-B, an Advice Letter is subject to disposition by the reviewing Industry Division whenever such disposition would be a "ministerial" act even through the subject matter is technically complex, so long as a technically-qualified person could determine objectively whether the proposed action has been authorized by the statutes or Commission orders cited in the advice letter. Whenever such determination requires more than ministerial action, the disposition of the advice letter on the merits will be by Commission resolution, as provided in General Rule 7.6.2.¹

CD reevaluated the proposed transaction using the criteria adopted for transfers and acquisitions for Nondominant Interexchange Carriers (NDIECs) and Competitive Local Exchange Carriers (CLECs) in D.04-10-038. This decision expands the scope of the advice letter process to allow CLECs to use ALs to seek prospective authority to transfer control or assets of non-controversial transactions subject to Public Utilities Code §§ 851 through 854, and in Appendix A, sets forth specific criteria that the requesting party must meet. Appendix A condition 1.a (3) requires that the Advice Letter "identify any decided or pending legal complaints against the involved entities, in California or other states."²

IXCH is a certificated CLEC in California, and acquired Telekenex in August 2010. IXCH is currently doing business in California under the dba Telekenex. We understand that on December 8, 2010, IXCH was added as a defendant to Straitshot's suit against Telekenex before the Washington District Court. Accordingly, IXCH is a party to the Washington State litigation and is one of the entities involved in the

¹ G.O. 96-B § 7.6.1

² D.04-10-038, App. A.

transfer of assets. For these reasons, TelePacific should have disclosed in AL 314 the pending litigation in Washington State against IXCH and Telekenex.

TelePacific contends that omitting reference to the Washington District Court litigation was not a deviation from the Commission's rules with respect to providing information relevant to TelePacific acquiring IXCH's assets and customers because D.04-10-038 does not provide clear guidance on the scope of litigation to be disclosed. We find TelePacific's contention unpersuasive. The Washington State litigation alleges bad behavior by the two principals of the entity that proposes to sell its assets and one of the principals in the selling entity was touted in a TelePacific press release as having a key role in the continuing entity. More specifically, the litigation alleges that a predecessor to IXHC, while controlled by two principals, one of whom was touted in the TelePacific press release, engaged in unlawful behavior to steal customers from Straitshot. Notwithstanding silence in D.04-10-038 regarding the specific type of litigation that must be reported, it should be readily apparent that the particular litigation ongoing in the Washington District Court alleging bad behavior by an individual who TelePacific had touted for his continuing role post-acquisition could be of interest to this Commission and therefore should have been disclosed. That omission was material and not in compliance with the Commission's rules as set forth in D.04-10-031 Appendix A. Those rules expressly require the entity filing the advice letter to disclose *pending* litigation involving *all* parties to the proposed transaction. This requirement exists for a reason, to inform the Commission of litigation that *may be* relevant to our consideration of the proposed transaction. The Commission should not, as we did here, have to rely on a protestant to reveal the existence of such litigation. Accordingly, we admonish TelePacific for its failure to reveal the Washington District Court litigation in its advice letter, and remind other applicants for authority under D.04-10-031 of their duty to be fully forthcoming in reporting on the existence of pending litigation. TelePacific's failure to report this litigation was not a harmless error.

Furthermore, CD now believes that the matter is not appropriate for the Advice Letter process. The issues Straitshot has raised and which arise from the omitted litigation (impact on Straitshot's ability to collect on any judgment it might obtain, and alleged bad behavior by one of the principals) demonstrate that disposition of AL 314 would be more than a ministerial matter. Under GO 96-B, General Rule 7.6.1, Industry Division Staff is only authorized to dispose of an advice letter where that disposition would be a "ministerial" act.

For these reasons, the Commission concludes that CD's July 15, 2011 written disposition of AL 314 in response to Straitshot's request for Commission review should be reversed.

In its response to Straitshot's request for Commission review, TelePacific argues that the provisions of General Rule 7.7.1 of G.O. 96-B "Review of Industry Division Disposition" do not apply to this Advice Letter. We come to the contrary conclusion. The

Commission adopted G.O. 96-B on January 25, 2007. General Rule 1.1 of G.O. 96-B “Structure; Purpose; Applicability” provides in pertinent part:

The General Rules govern advice letters and information-only filings submitted to the Commission by public utilities that are gas, electrical, telephone, water, sewer system, pipeline, or heat corporations, as defined in the Public Utilities Code. . . . The provisions of this General Order govern only those informal matters submitted for filing on or after July 1, 2007.

This section of the General Order does not state any exception for advice letters filed under previously approved decisions, such as D. 04-10-038, which the Commission approved in October of 2004. Nor, is it appropriate to imply an exception here. As shown by the facts described above, construing D.04-10-038 to restrict a protestant’s right to request Commission review of a Staff disposition would produce the following results: (i) allowing Staff to make a decision more than ministerial in nature (i.e. dispose of a protest raising issues that can only the Commission can decide); and (ii) allow an advice letter requesting approval of an acquisition of assets to be approved without any substantive review, even though the proposed acquisition poses important questions that the Commission should be consider and decide. Accordingly, we conclude that the more recent provisions of G.O. 96-B, including General Rule 7.7.1 “Review of Industry Division Disposition” apply to this advice letter, and that no exception to this rule should be found appropriate in this instance.

General Rule 7.7.1 provides, in pertinent part:

a person filing a protest . . . may request Commission review of an Industry Division disposition. . . . The request for Commission review shall be filed with the reviewing Industry Division within 10 days after the issuance of the disposition, shall be served on the utility, all persons filing protests or responses, and any third party whose name and interest in the relief sought appear on the face of the advice letter, and shall set forth specifically the grounds on which the requester considers the disposition to be unlawful or erroneous. Upon filing of a timely request for Commission review, the Industry Division will prepare and place on the Commission's meeting agenda a proposed resolution, and will serve it on the requester and all others on whom the request was served.

Straitshot timely filed a request for Commission review. Thus, CD properly prepared this draft resolution for our consideration, which, under General Rule 7.7.1, preserves our opportunity to review CD's written disposition, and to reverse that disposition where, as here, such a reversal is appropriate.

Having determined that we must reverse Staff's written disposition of AL 314, we consider what steps should be taken next. Appendix A to D.04-10-038 provides that, [i]f the Commission believes that the matter warrants more comprehensive review, the Commission may suspend the advice letter and direct the parties to file an application." For the reasons detailed above, this matter does require more comprehensive review than is available under the advice letter process, and, therefore, we will suspend the advice letter, and we direct the parties to the proposed transaction to file an application seeking Commission approval of the proposed acquisition of assets.

COMMENTS

Public Utilities Code section 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment to the utilities and other interested parties.

On September 6, 2011 a Notice of Availability (NOA) of Draft Resolution T-17344 was posted on the Commission website informing parties that the Draft Resolution was available for public comment. The Draft Resolution would suspend the Communication Division's Written Disposition of AL 314 and direct the parties to the transaction to file an application seeking Commission approval of the proposed acquisition of assets. The NOA limited the Opening and Reply comments to 5 pages in length, respectively. Opening Comments were due by 5:00 pm, September 21, 2011. Reply Comments were to be filed by 5:00 pm on September 26, 2011.

By letter dated September 21, 2011, Straitshot informed the Commission's Executive Director and the Director of the Communications Division that Straitshot supported the Draft Resolution T-17344 and would not be submitting comments on the Draft Resolution, but reserved all rights to submit reply comments.

On September 21, 2011, TelePacific and TMS timely filed joint Opening Comments, which exceeded the page length limit identified in the NOA. TelePacific's submission consisted of: a) Comments - 15 pages, b) Proposed Revised Draft Resolution T-17344 - 13 pages (Attachment 1), c) Declaration of Kenneth Bisnoff - Senior V.P. of TelePacific and TMS - 3 pages (Attachment 2), Declaration of David Zahn - V.P. of Marketing of

TelePacific and TMS - 2 pages (Attachment 3); FCC Public Notice re: approval of TelePacific Acquisition of Assets of IXCH - 5 pages (Attachment 4), and excerpts from a transcript from the Washington District Court litigation - 4 pages (Attachment 5).

In its comments, TelePacific recommends that the Commission reverse Draft Resolution T-17344 and approve the acquisition. TelePacific submits that:

- The Draft Resolution incorrectly states that a principal of IXCH will become a Principal of TelePacific,
- The transaction is in the public interest, based on the factors in D.98-08-068 used in a public interest analysis of a proposed acquisition,
- Straitshot seeks relief that the Commission should not and cannot grant,
- TelePacific's failure to identify the Washington District Court litigation does not preclude the Commission from approving AL 314.

TelePacific submits that the Draft Resolution contains a material factual error regarding one of the principals of IXCH remaining a principal in the continuing entity, stating that this is not true. As stated in the declaration of Kenneth Bisnoff, Senior Vice President of both TelePacific and TMS, attached to TelePacific's comments, Mr. Bisnoff states that the two principals of IXCH, Brandon Chaney and Anthony Zabit, that were discussed in the Draft Resolution will not in any way be owners, employees, officers, board members, or principals of TelePacific, TMS, or any affiliated entity, but as a condition of the acquisition will be engaged as consultants for a one-year period. As consultants, they would not be authorized to make policy, management, or other operational decisions on behalf of TelePacific.

TelePacific advises the Commission that the FCC approved TelePacific's acquisition of IXCH assets³, rejecting a protest by Straitshot. TelePacific states that the FCC rejected Straitshot's protest on the grounds that the protest was not relevant to the acquisition, and further claims that the FCC concluded that approval of the acquisition would not preclude Straitshot from obtaining the relief that it was requesting from the Washington Court.⁴

On September 26, 2011, Straitshot timely filed Reply Comments supporting Draft Resolution T-17344. Straitshot submits that:

³ WC Docket No. 11-85 *Domestic Section 214 Application Filed for the Acquisition of Assets of IXC Holdings, Inc. by TelePacific Managed Services*, DA 11-1347 Released August 3, 2011 Approving the acquisition.

⁴ We can find nothing in the FCC order that concludes that Straitshot will be able to obtain the relief it seeks in the Washington District Court.

- TelePacific's comments violated the procedure in the NOA for comments by exceeding the page limit designated for comments. This violation underscores the need to use the Application process for AL 314,
- TelePacific's failure to disclose the Washington District Court litigation has vitiated the Advice Letter process,
- Conflicting statements about IXCH principal, Chaney's continuing role further renders the AL process inappropriate. Straitshot cites a TelePacific press release on May 5, 2011 that states Chaney will operate the business assets of Telekenex as a separate channel.

On October 5, 2011 TelePacific sent a letter asking the Director of the Communications Division acknowledging that the September 21, 2011 Opening Comments exceeded the page limit set forth in the NOA and requested that the Commission accept the joint comments as submitted, but reformatted to be 10 pages in length. TelePacific reasoned that since they filed joint comments with their subsidiary, TMS, and each entity could have filed separate, 5 page comments.

On October 5, 2011, the Assistant General Counsel informed both TelePacific and Straitshot by email that Straitshot may submit an additional 10 pages of comments to respond to the 15 pages of comments filed on behalf of TelePacific and TMS. These additional comments were due by the close-of-business on Friday, October 14, 2011.

On October 7, 2011, the Director of the Communications Division denied TelePacific's October 5, 2011 request to accept the 10 page reformatted version of the October 5, 2011 Opening Comments on Draft Resolution T-17344 filed jointly by TelePacific and TMS as Straitshot had been allowed to supplement its reply comments with an additional 10 pages as a means to provide equal opportunity to comment on the Draft Resolution.

On October 14, 2011, Straitshot timely filed 10 page additional reply comments, recommending that the Commission adopt Draft Resolution T-17344 as proposed by the Communications Division and asserted that:

- TelePacific's proposal raises serious public interest concerns due to continuing involvement by IXCH employees, including two IXCH principals Chaney and Zabit, that are alleged to have engaged in anti-consumer and anti-competitive practices,
- TelePacific's declarations and unsupported assertions only underscore the complexities of the transaction and the inappropriateness of the advice letter process and the need for the application process. The declarations contained multiple single spaced statements that discussed a wide range of topics which should be scrutinized in the application process, including:
 - The statement that no IXCH or IXC employees that are Litigation defendants are being offered employment at TelePacific,

- The discussion of no fewer than four different types of transition agreements for acquisitions, but no explanation of why consulting contract were chosen for Chaney and Zabit, particularly since the May 5, 2011 TelePacific press release stated that Chaney will lead the Telekenex business within TelePacific,
- The expected span of supervisory relationships for Chaney and Zabit, and all IXCH employees coming to TelePacific,
- The claimed purported benefits of the acquisition to certain business customers of TelePacific and IXCH, as well as other California customers, but no discussion of what those benefits may be.
- TelePacific's nondisclosures, inconsistencies, and procedural failures further amplify the need for the application process,
 - Public interest concerns remain regarding the continuing involvement of IXCH employees in the post-acquisition operation,
 - Failure to disclose the Washington District Court litigation,
 - Conflicting statements regarding what role Chaney and Zabit will have in the post-acquisition operation,
 - Conflicting statement that no litigation defendant will be offered employment post-acquisition operation when the senior manager, Karen Salazar, who is the wife of Mr. Zabit will apparently receive an offer,
 - Exceeding the 5-page limit on Comments,
 - Failing to include a table of authorities and a subject index with recommendations to the Draft Resolution ,
- TelePacific has distorted multiple proceedings at the FCC and at the Washington District Court, and has mischaracterized what Straitshot is requesting of the Commission.

On October 31, 2011, the Communications Division issued a Notice of Availability (NOA) of Alternate Resolution T-17344. Parties were directed to file comments no later than 5:00 pm on November 14, 2011. Reply comments were due no later than 5:00 pm on November 21, 2011. The NOA had an error in the middle of the document that incorrectly stated: that the Commission may vote on this resolution on November 10, 2011, or it may postpone a vote until later. On November 7, 2011, the Communications Division issued a correction to the NOA to correctly state that the Commission may vote on this resolution on December 15, 2011, or it may postpone a vote until later.

On November 14, 2011 Straitshot timely filed comments on DRAFT Alternate Resolution T-17344, urging the Commission to reject the Alternate Resolution and approve the CD Resolution for the following reasons:

1. Straitshot has raised substantial issues of material fact that relate directly to protection of California customers and other market participants, and call

into question TelePacific's fitness to provide public utility service in California.

2. The Alternate Resolution would reach incorrect, incomplete and unjustified factual findings regarding the future role of the alleged "bad actors" and believes that further proceedings are necessary to scrutinize the level and scope of power that the alleged "bad actors" will have in the post-merger organization, and the possible imposition of conditions on the acquisition.
3. The Alternate Resolution would improperly resolve disputed issues solely on the basis of an untested declaration, and thereby raise due process issues. This approach contravenes well-established Commission policy and California law, citing decision (D.) 11-07-033 which ordered a hearing to address disputed issues of fact.
4. The Alternate Resolution would violate the Commission's own rules by improperly approving this transfer of control by advice letter. Decision (D.) 04-10-033 and General Order 96-B allow the advice letter process to be used for transfers of control when certain conditions are met, and TelePacific's AL 314 does not meet these conditions.

On November 16, 2011, Straitshot submitted a Corrected copy of the November 14, 2011 comments on Draft Alternate Resolution T-17344 to make a minor correction.

After taking into consideration the substantial comments received from parties on both DRAFT Resolution T-17344 and DRAFT Alternate Resolution T-17344, we find that there are material issues of fact regarding the protection of California customers and the question of TelePacific's fitness to provide public utility service in California that need to be resolved in a formal application. More specifically, the compliant cases regarding Telekenex that Straitshot has cited in its protest to AL 314 and in its reply comments on Draft Resolution T-17344 indicate that there may be issues regarding the business practices that will be employed in the Telekenex segment of TelePacific's business after the acquisition has been consummated. While TelePacific is an established carrier in California and other states and has its own corporate business practices, we are concerned that there could be a possibility that some of Telekenex's business practices may continue to be employed in the post-transaction entity and we believe that this possibility warrants a formal proceeding to elicit information from TelePacific regarding what if any, safeguards will be employed in the post-acquisition operations and to allow Straitshot an opportunity to cross examine TelePacific's witnesses. In a formal proceeding, where discovery is available, we might be inclined to approve this transaction based on TelePacific's declaration stating that: (i) neither of the principals of IXCH (Mssrs. Chaney and Zabit) would be principals or employees of the entity post-

acquisition, nor would they be allowed to make any policy, management or other operating decisions; and (ii) none of the IXC or IXCH employees being offered employment are named as defendants in the Washington District Court litigation. This, however, is not a formal proceeding. Straitshot did submit a data request to TelePacific concerning, inter alia, (i) the apparent contradiction between TelePacific's press release touting Mr. Chaney's continuing role post-acquisition and the declaration stating that he will have no significant authority post-acquisition and (ii) a potential contradiction in the declaration given that the declaration states that all current eligible employees of IXC or IXCH will be offered employment post-acquisition (except for Zabit and Chaney) and that none of the IXCH employees who will continue to be employed post-acquisition are named defendants in the Washington District Court litigation, thus apparently indicating that Mr. Zabit's wife would be employed post-acquisition, although Straitshot states that Karen Salazar [Zabit's wife], Senior Director of Sales and Operations at IXCH, is named as a defendant in the litigation where she is accused of committing numerous anti-consumer acts.

In response to Straitshot's data request, TelePacific stated that it would not respond to Straitshot's data request "as the . . . Commission's . . . rules do not contemplate discovery by protestants in informal advice letter proceedings." Furthermore, TelePacific, in its reply comments to the alternate draft resolution, states Zabit's wife is not named in the Washington District Court complaint under her legal name, Karen Salazar, but as the wife of Anthony Zabit "Jane Doe Zabit"

Thus, as things now stand, this Commission is unclear as to what role Karen Salazar, the wife of Anthony Zabit, allegedly played in the events at issue in the Washington District Court litigation, and will play in the entity post-acquisition. Similarly, we are unformed as to the reason why Mr. Chaney, who was touted in a TelePacific press release for his continuing role post-acquisition, will now, according to the declaration, have no such role. In light of TelePacific's refusal to provide discovery, we conclude that the best course of action is to require a formal application in which these issues and the fitness of the post-acquisition entity can be explored, through discovery and other means. Consequently, we believe that it is appropriate to deny approval of this advice letter and require TelePacific and IXCH to file an application for approval of TelePacific's acquisition of the assets, employees, and customer base of IXCH.

Straitshot believes that granting the acquisition would violate the Commission's own rules because AL 314 did not meet the conditions contained in D.04-10-038 and G.O. 96-B for the expedited advice letter process for approval for proposed acquisitions of noncompetitive telecommunications facilities. Straitshot cites D.04-10-038 as restricting the advice letter process for transfers of control that do not raise concerns regarding the protection of consumer interest or the interests of other market participants.

As we have previously found, this matter does require more comprehensive review than is available under the advice letter process, and, therefore, we will suspend the advice letter, and we direct the parties to the proposed transaction to file an application seeking Commission approval of the proposed acquisition of assets.

FINDINGS

1. Decision (D.) 04-10-031 allows a Nondominant Interexchange Carrier (NDIEC) or Competitive Local Exchange Carrier (CLEC) certificated by the Commission to file an advice letter, instead of an application, for authority to transfer control, or assets, including a merger with another certificated NDIEC or CLEC, if all conditions set forth in Appendix A to the decision are met. Appendix A.1.a(3) requires, among other things, that any such advice letter identify any decided or pending legal complaints against the involved entities, in California or other states.
2. In the Washington State litigation, Straitshot alleges a series of unlawful schemes agreed to and perpetuated by IXCH, Telekenex, Inc. (Telekenex), IXCH/Telekenex officers and controlling owners Brandon Chaney and Anthony Zabit, and other individual defendants (collectively, the "IXCH/Telekenex defendants") including: stealing Straitshot's trade secrets and confidential customer information, making a series of misrepresentations to Straitshot's customers, and 3) using the stolen trade secrets and confidential customer information to destroy Straitshot's business and coerce its customers into long-term contracts that favored IXCH/Telekenex.
3. IXCH is a party to the Washington State litigation as well as one of the entities involved in the transfer of assets.
4. TelePacific should have disclosed in AL 314 the Washington State litigation. The failure to identify this information in the advice letter was a material omission and not in compliance with Commission rules.
5. The Advice Letter process provides a simplified review of the types of utility requests that are expected to be non-controversial and do not raise important policy questions, and do not require evidentiary hearings that may be conducted only in a formal proceeding.
6. G.O. 96-B General Rule 7.7.1 does apply to Advice Letter 314.

7. G.O. 96-B General Rule 1.1 does not set forth any exception for advice letters filed under previously approved decisions, such as D.04-10-038, and it is not appropriate to find an exception here.
8. TelePacific's Advice Letter 314 contains complexities requiring disposition of more than a ministerial nature by an Industry Division.
9. Straitshot timely filed a request for review of the Communications Division's Written Disposition regarding TelePacific's Advice Letter 314 which denied Straitshot's protest and approved TelePacific's acquisition of IXCH.
10. On September 6, 2011 a Notice of Availability (NOA) of Draft Resolution T-17344 was posted on the Commission website informing parties that the Draft Resolution was available for public comment.
11. By letter dated September 21, 2011, Straitshot informed the Commission's Executive Director and the Director of the Communications Division that Straitshot supported the Draft Resolution T-17344 and would not be submitting comments on the Draft Resolution, but reserved all rights to submit reply comments.
12. On September 21, 2011, TelePacific and TMS timely filed joint Opening Comments, which exceeded the page length limit identified in the NOA.
13. On September 26, 2011, Straitshot timely filed Reply Comments supporting Draft Resolution T-17344.
14. On October 5, 2011, the Assistant General Counsel informed both TelePacific and Straitshot by email that Straitshot may submit an additional 10 pages of comments to respond to the 15 pages of comments filed on behalf of TelePacific and TMS. These additional comments were due by the close-of-business on Friday, October 14, 2011.
15. On October 14, 2011, Straitshot timely filed 10 page additional reply comments, recommending that the Commission adopt Draft Resolution T-17344 as proposed by the Communications Division.
16. Straitshot has presented material issues of fact in this case that need to be decided regarding the protection of California customers, and the question of TelePacific's fitness to provide public utility service in California.

17. The declaration of TelePacific's Senior Vice President, Kenneth Bisnoff does not carry sufficient weight for us to rely on without a more developed record given that it contradicts TelePacific's May 2011 press release regarding the role of Chaney and Zabit in the post-transaction operation.
18. Straitshot maintains that Karen Salazar [Zabit's wife], Senior Director of Sales and Operations at IXCH, is named as a defendant in the litigation where she is accused of committing numerous anti-consumer acts, and will apparently be offered employment by TelePacific. This allegation contradicts the declaration of TelePacific's Senior Vice President that none of the IXC or IXCH employees being offered employment are named as defendants in the Washington litigation.
17. The Communications Division's Written Disposition regarding TelePacific's Advice Letter 314 should be reversed.
18. Pursuant to D.04-10-038 Appendix A.2, the Commission should suspend TelePacific's Advice Letter 314 and direct the parties to the proposed transaction to file an application seeking Commission approval of the proposed acquisition of assets.

THEREFORE, IT IS ORDERED that:

1. The Written Disposition of the Communications Division regarding TelePacific Advice Letter 314 is suspended and the parties to the proposed transaction are directed to file an application seeking Commission approval of the proposed acquisition of assets.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on February 1, 2012, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

