

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ENVISION) CASE NO. ENL-T-20-01
NETWORKS LLC’S ELIGIBILITY TO)
HOLD CERTIFICATE OF PUBLIC) ORDER VACATING ORDER NO. 34785
CONVENIENCE AND NECESSITY NO.)
529) ORDER TO SHOW CAUSE
)
)
) **NOTICE OF HEARING**
)
) **ORDER NO. 34816**
)

Envision Networks LLC (“Company”) holds Certificate of Public Convenience and Necessity (“CPCN”) No. 529. This matter comes before the Commission due to the Company’s failure to provide timely reports to the Commission regarding the number of customers to which it is providing basic local exchange service, in violation of Order No. 34443, and the Company’s failure to provide basic local exchange service, in violation of Order No. 26665. *See Idaho Code* § 62-605(5)(b).

BACKGROUND

The Commission has noneconomic regulatory authority over telephone corporations that provide basic local exchange service¹ in Idaho. *See Idaho Code* § 62-605(5)(b). A provider of basic local exchange service must apply to the Commission for a CPCN. *See Order No. 26665*.

A CPCN can be valuable to a telephone corporation. Idaho Code grants telephone corporations broad access to rights of way along public roads and highways, and a provider that holds a CPCN issued by the Commission is generally presumed to be a telephone corporation by governmental entities granting right-of-way access. *See Idaho Code* § 62-701. Telephone corporations that do not provide basic local exchange service are ineligible for a CPCN because the Commission has almost no regulatory authority over them. *See Order Nos. 26665 at 1, and 32059 at 2-3*.

¹ Basic local exchange service means the provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communication within a local exchange calling area. *Idaho Code* § 62-603(1).

The Commission issued the Company CPCN No. 529 in October 2019 subject to several conditions. In a September 9, 2020 decision memorandum, Staff asserted that the Company has failed to meet a condition the Commission placed on the Company when it approved the Company's application ("**condition 4**"). Specifically, in Order No. 34443, the Commission ordered:

The Company must provide three reports to the Commission indicating the number of basic local exchange customers it has and the services being offered. These reports will be due on: January 15, 2020; May 15, 2020; and September 15, 2020. If the Company fails to provide the three reports, the Company shall relinquish its CPCN and all telephone numbers.

Order No. 34443 at 2.

On September 28, 2020, the Commission issued an Order to Show Cause, requiring the Company to appear before it on October 20, 2020 to show cause why the Commission "should not find the Company violated condition 4 of Order No. 34443." Order No. 34785. The Order to Show Cause also noted that "[t]elephone corporations that do not provide basic local exchange service are ineligible for a CPCN." *Id.* at 2. However, the Commission did not cite failure to provide basic local exchange service as a claim against the Company. The Order to Show Cause was served on the Company by certified mail.

On October 5, 2020, the Company filed all three reports with the Commission. Each of the reports indicated the Company has "0" basic local exchange customers.

STATUTORY AUTHORITY

The Commission has jurisdiction in this matter under *Idaho Code* § 61-501, which vests the Commission with the authority and jurisdiction to supervise and regulate every public utility in the state. *Idaho Code* § 62-605(5)(b) gives the Commission "continuing authority to determine the noneconomic regulatory requirements relating to basic local exchange service for all telephone corporations providing basic local exchange service...." Under *Idaho Code* § 61-624, the "[C]ommission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complainants, rescind, alter[,] or amend any order or decision made by it," including an order granting a CPCN to a telephone corporation. *See Idaho Code* §§ 61-612 to 61-618.

ORDER NO. 34785 VACATED

The Commission's previous Order to Show Cause in this case, Order No. 34785, only listed one claim against the Company – failure to file reports with the Commission. It is axiomatic that the reports are required to ensure that the Company is providing basic local exchange service. If the Company is not providing basic local exchange service it is not eligible for a CPCN. The Company's October 5, 2020 filing admits that it has "0" basic local exchange customers. However, because failure to provide basic local exchange service was not listed as a claim against the Company in the September 28, 2020 Order to Show Cause, and in order to ensure that all due process rights are afforded, the Commission vacates Order No. 34785 and issues this Order in its place.

This Order differs from Order No. 34785 in three respects. First, it notes the Company's recent filing of the three reports. Second, it adds Claim 2 and requires the Company to appear before the Commission to address both claims. Third, it sets a new date for the show-cause hearing. *See Idaho Code § 61-616.*

CLAIM

1. Violation of Commission Order No. 34443

In Order No. 34443, the Commission conditioned approval of the Company's application for a CPCN on the Company providing "three reports to the Commission indicating the number of basic local exchange customers it has and the services being offered." The first report was due January 15, 2020; the second report on May 15, 2020; and the third report on September 15, 2020.

On October 5, 2020, following the Company's receipt of the Commission's Order to Show Cause, the Commission received all three of the reports from the Company. However, all three reports were filed after the deadlines set in Order No. 34443.

2. Violation of Commission Order No. 26665

Consistent with Title 62 and this Commission's established practices, telephone corporations that do not provide basic local exchange service are ineligible for a CPCN. *See* Order No. 26665. On October 5, 2020, the Company filed reports with the Commission indicating the Company has "0" basic local exchange customers.

ORDER

IT IS HEREBY ORDERED that the previous Order to Show Cause in this case, Order No. 34785, is vacated. Based on the evidence before the Commission, and good cause appearing, IT IS FURTHER ORDERED that the Company shall appear before the Commission on **TUESDAY, NOVEMBER 10, 2020, AT 2:00 PM (MDT)**, to show cause:

- a. Why the Commission should not find the Company violated condition 4 of Order No. 34443;
- b. Why the Commission should not find the Company violated the CPCN eligibility requirements in Order No. 26665; and
- c. Why the Commission should not rescind Order No. 34443 pursuant to *Idaho Code* § 61-624 based on the Company's failure to meet the Commission's prescribed conditions for CPCN issuance, thereby revoking the Company's CPCN.

The Company may appear before the Commission in person or telephonically. Interested persons can call **1-800-920-7487** shortly before the designated time and enter the passcode **6674832#** when prompted.

IT IS FURTHER ORDERED that the telephonic hearing will meet accessibility requirements of the Americans with Disabilities Act. Persons needing the help of a sign language interpreter or other assistance in order to participate in or to understand testimony at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION
P.O. BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0338 (Telephone)
(208) 334-3762 (FAX)
secretary@puc.idaho.gov

IT IS FURTHER ORDERED that all proceedings in this matter will be conducted pursuant to Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

IT IS FURTHER ORDERED that the Commission Secretary serve this Order to Show Cause by Certified Mail (return receipt requested) upon the person designated to receive Notices
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of Summonses and Complaints (IDAPA 31.01.01.016) and upon the person designated by the utility to receive legal service in Idaho. *Idaho Code* § 61-615.

IT IS FURTHER ORDERED that parties should continue to comply with Order No. 34781, issued September 17, 2020. All pleadings should be filed with the Commission electronically and shall be deemed timely filed when received by the Commission Secretary. *See* Rule 14.02. Service between parties should also be accomplished electronically. Voluminous discovery-related documents may be filed and served on CD-ROM or a USB flash drive.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19th day of October 2020.



PAUL KJELLANDER, PRESIDENT

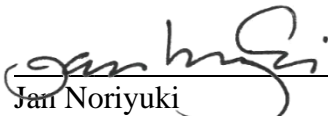


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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