

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)
CONVENIENCE AND NECESSITY NO. 529) **ORDER NO. 34867**
_____)

Envision Networks LLC (Company) was issued Certificate of Public Convenience and Necessity (CPCN) No. 529 in October 2019. This Commission issues CPCNs to telephone corporations subject to certain conditions. The Company’s Certificate was issued subject to: (1) compliance with the North American Number Pool Administrator (NANPA) requirements; (2) contribution to the Idaho Universal Service Fund, Idaho Telecommunications Relay Services (TRS), and Idaho Telecommunications Assistance Program (ITSAP); (3) compliance with all future reporting requirements deemed appropriate by the Commission for competitive telecommunications providers; and (4) filing of three reports—due January 15, 2020, May 15, 2020, and September 15, 2020—stating the number of customers receiving basic local exchange service from the Company and the services being offered. Order No. 34443.

In a September 9, 2020 decision memorandum, Staff notified the Commission that the Company had failed to provide the Commission with the reports required in Order No. 34443. On September 28, 2020, the Commission issued an Order to Show Cause why the Commission should not rescind Order No. 34443 based on the Company’s failure to meet the prescribed conditions for CPCN issuance. *See* Order No. 34785. The Commission set a hearing date of October 20, 2020. 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.

On October 5, 2020, the Company filed all three reports with the Commission. Each report indicated the Company has “0” basic local exchange customers. On October 19, 2020, the Commission vacated its previous Order to Show Cause and issued a new Order to Show Cause. Order No. 34816. Order No. 34816 differed from Order No. 34785 in three respects. First, although it continued to include a claim against the Company (Claim 1) for failure to file required reports, the Order also noted that the Company filed three reports on October 5. Second, it added Claim 2

– a more explicit reference to the Company’s obligation to provide basic local exchange service. Third, it set a new date for the show-cause hearing, requiring the Company to appear before the Commission to address both Claims 1 and 2.

On November 10, 2020, the Commission held a show-cause hearing. A representative of the Company appeared and presented arguments. Having reviewed the record, we rescind Order No. 34443 that granted the Company’s application for a CPCN, thereby revoking CPCN No. 529.

ORDER TO SHOW CAUSE

The Commission’s Order to Show Cause and Notice of Hearing required the Company to appear before the Commission 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.

Order No. 34816. The Commission served a copy of the Order to Show Cause on the Company via certified mail.

On November 10, 2020, the Commission held the show-cause hearing. L.D. Barthlome appeared telephonically and stated that he is the sole owner of the Company. *See* IDAPA 31.01.01.043.01. Mr. Barthlome explained that his failure to file the required reports was due to ignorance of the reporting requirement. He testified that the person who generally handled reports of this kind left the Company in November 2019. Mr. Barthlome noted that he only recently obtained access to the email account to which notice of reporting requirements was being sent.

Mr. Barthlome acknowledged that the three reports submitted by the Company on October 5, 2020 confirmed the Company has no basic local exchange customers. He testified the Company purchased a telephone switch some time ago and intends to provide basic local exchange service to customers because the competitive rate for basic local exchange service would be profitable for the Company. However, Mr. Barthlome stated the Company has been unable to secure any customers to take service. Mr. Barthlome lamented that a common problem in the industry is finding and keeping copper-line telephone customers. His assessment was that these

customers are abandoning traditional telephone service for VoIP and other technologies. In answer to the Commission's inquiry as to whether the Company has a business strategy to obtain basic local exchange customers in the future, Mr. Barthlome admitted that the Company does not have an answer for finding and keeping the increasingly rare copper-line telephone customer.

Commission Staff was represented at hearing by Deputy Attorney General Matt Hunter. Mr. Hunter requested that several exhibits be entered into the record. The first exhibit was the signed affidavit of Daniel Klein, a utility analyst with the Commission specializing in telecommunications. In his affidavit, Mr. Klein stated that he contacted NANPA to inquire whether the Company has been assigned numbering resources. He also asked whether the Company had a VoIP authorization to get numbering resources. Mr. Klein represented he was informed that the Company does not have numbering resources assigned to it and does not have VoIP authorization. Mr. Klein also stated that he accessed the Federal Communications Commission's online database to determine whether the Company has received VoIP authorization. He stated he was unable to find any record that the Company has VoIP authorization.

The second exhibit was a copy of the signed certified mail receipt, indicating the Company received a copy of the Order to Show Cause. The third exhibit was a copy of Order No. 26665, which established the CPCN eligibility requirements for Title 62 telephone corporations. Without objection, the three exhibits were entered into the record.

COMMISSION FINDINGS AND DECISION

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. Further, 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. 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.*

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).

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.

As recently as September 2018, the Commission observed that it does not have authority to regulate a company that does not provide switched-based telecommunication service in Idaho, and that the Title 62 CPCNs were never intended for companies outside the Commission's statutory authority. Order No. 34130. Further, Commission Staff has consistently reiterated that a CPCN may not be issued or held by a company that is not providing basic local exchange service. *See Case No.* IGL-T-18-01, Staff Comments; Case No. SLI-T-20-01, Staff Comments.

The Company filed the required reports on October 5, 2020—almost a month after the last of the three reports required by Order No. 34443 was due. The reports show, and the Company confirmed, that the Company has not provided basic local exchange service since receiving its CPCN in October 2019. We appreciate Mr. Barthlome appearing at the show-cause hearing, and we sympathize with the Company's struggle to find customers who want basic local exchange service. Nevertheless, Title 62 telephone corporation certification is exclusively for telephone corporations providing basic local exchange service. The facts and evidence prove, and the Company admits, that it is not providing basic local exchange service. Therefore, the Company is ineligible for a CPCN. Consequently, it is fair and in the public interest for this Commission to rescind Order No. 34443, thereby revoking CPCN No. 529.

ORDER

IT IS HEREBY ORDERED that Order No. 34443 is rescinded pursuant to *Idaho Code* § 61-624, effective upon issuance of this Order. As a result, CPCN No. 529 is revoked.

IT IS FURTHER ORDERED that this Order shall be served by certified mail on the registered agent of Envision Networks LLC.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7)

days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th day of December 2020.



PAUL KJELLANDER, PRESIDENT

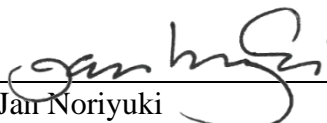


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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