

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF FIBER BROADBAND,) CASE NO. FBL-T-20-01
LLC’S ELIGIBILITY TO HOLD)
CERTIFICATE OF PUBLIC CONVENIENCE) ORDER TO SHOW CAUSE
AND NECESSITY NO. 526)
) NOTICE OF HEARING
)
) ORDER NO. 34788

Fiber Broadband, LLC dba Tru Fiber (“Company”) holds Certificate of Public Convenience and Necessity (“CPCN”) No. 526. This matter comes before the Commission due to the Company’s failure to provide evidence to Commission Staff that it is providing basic local exchange service, as required by Order No. 34135. *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.

The Commission issued the Company CPCN No. 526 in August 2018 subject to several conditions. In a September 9, 2020 decision memorandum, Staff asserted that the Company has violated two conditions of the Commission’s order granting the Company a CPCN:

3. The Company provide a brief confidential report to Commission Staff on February 1, 2019, and August 1, 2019, with an update on the number of

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).

customers who are currently receiving basic local exchange service from the Company; and

4. The Company shall relinquish its CPCN and all telephone numbers if, within one year of issuance of a CPCN, the Company is not providing local exchange telecommunications services in Idaho.

Staff alleged it did not receive either report required by condition 3. Klein Aff. at 2. Further, Staff alleged that it sent a letter to the Company on June 4, 2019, requesting that the Company provide evidence that it is providing basic local exchange service. Klein Aff. at 2, Exhibit A. Staff stated that it spoke with a Company representative by phone in August 2019 and confirmed that the Company was in receipt of Staff's letter. *Id.* Regardless, the Company never provided the requested evidence. *Id.*

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....” The Commission expressly established the Title 62 telephone corporation certification process *only* for telephone corporations providing basic local exchange service. *See* Order No. 26665.

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.

CLAIM

1. Violation of Commission Order No. 34135

Order No. 34135 requires the Company to “provide a brief confidential report to Commission Staff on February 1, 2019, and August 1, 2019, with an update on the number of customers who are currently receiving basic local exchange service from the Company....” The Order also requires the Company to “relinquish its CPCN and all telephone numbers if, within one year of issuance of a CPCN, the Company is not providing local exchange telecommunications

service in Idaho.” Granting the Company’s CPCN was subject to these conditions. Staff received neither of the required reports. Klein Aff. at 1. Additionally, the Company’s failure to respond to Staff’s June 4, 2019 letter raises the question whether the Company has been providing basic local exchange service. *See* Klein Aff. at 2. If it has not, the Company is in violation of Condition 4 of Order No. 34135.

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. Commission Staff have documented efforts made to confirm whether the Company is providing such service.² Staff sent a letter to the Company directing it to “provide evidence that [the Company] is providing basic local exchange services...or provide evidence that [the Company] is preparing to provide such services.” Klein Aff. at 1. Staff later spoke with a Company representative who confirmed receipt of the letter. *Id.* at 2. Staff never received the requested evidence. *Id.*

ORDER

Based on the evidence before the Commission, and good cause appearing, IT IS HEREBY ORDERED that the Company shall appear before the Commission on **TUESDAY, OCTOBER 20, 2020, AT 10:00 AM (MDT)**, to show cause:

- a. Why the Commission should not find the Company violated condition 3 and/or condition 4 of Order No. 34135;
- 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. 34135 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.

² The Commission’s employees are agents of the three-member Commission, tasked with performing the duties and exercising the powers conferred by law on the Commission. *Idaho Code* § 61-206.

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 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.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 28th
day of September 2020.



PAUL KJELLANDER, PRESIDENT




KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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**IN THE MATTER OF FIBER BROADBAND,)
LLC’S ELIGIBILITY TO HOLD) CASE NO. FBL-T-20-01
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY NO. 526) AFFIDAVIT OF DANIEL KLEIN
)**

DANIEL KLEIN, being duly sworn, stated:

1. My name is Daniel Klein. I have personal knowledge of the facts stated in this affidavit.
2. I am a Utility Analyst at the Idaho Public Utilities Commission. I started working in this position in 2017. I am responsible for reviewing telecom tariff filings, requests for telecom Certificates of Public Convenience and Necessity, requests for Eligible Telecommunications Carrier status, broadband tax credit filings, and other telecom-related items.
3. Under Order 34135, the granting of Fiber Broadband, LLC’s CPCN was conditioned upon the Company filing two reports—one by February 1, 2019, and the other by August 1, 2019—with Commission Staff, each stating the number of customers receiving basic local exchange service from the Company. In the spring of 2019, I became aware that the first of these two reports had not been filed.
4. On June 4, 2019, I sent a letter to the Company’s registered agent, Kenneth Pfannenstiel, at 620 Pheasant Ridge Drive, Chubbuck, Idaho, 83202. The letter directed the Company to provide Commission Staff with evidence that the Company was providing basic local exchange service. The letter also informed the Company that “if the requested information is not provided by July 2, 2019, Commission Staff will request that the Commission commence proceedings requiring [the Company] to show cause why its CPCN should not be cancelled.”
5. In August 2019, I spoke by phone with a representative of the Company who confirmed receipt of the June 4, 2019 letter.

6. To date, the Company has not provided evidence that it provides basic local exchange service.

Dated this 23 day of September 2020.



Daniel Klein
Utility Analyst
Idaho Public Utilities Commission

SUBSCRIBED AND SWORN to before me this 23rd day of September 2020.



Notary Public for Idaho
My commission expires on March 15, 2025

