

**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 )**  
**AND NECESSITY NO. 526 ) ORDER NO. 34852**  
**)**

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Fiber Broadband, LLC dba Tru Fiber (Company) was issued Certificate of Public Convenience and Necessity (CPCN) No. 526 in July 2019. This Commission issues CPCNs to telephone corporations subject to certain conditions. The Company’s Certificate was issued subject to: (1) compliance with the Number Pool Administrator and Order No. 30425 mandating number resource utilization forecast (NRUF) reporting; (2) contribution to the Idaho Universal Service Fund, Idaho Telecommunications Relay Services (TRS), Idaho Telecommunications Assistance Program (ITSAP) and any future reporting requirements deemed appropriate for competitive telecommunication providers; (3) filing of two confidential reports—due February 1, 2019, and August 1, 2019—stating the number of customers receiving basic local exchange service from the Company; and (4) the Company shall relinquish its certificate and any telephone numbers if, within one year of the issuance of its CPCN, the Company is not providing local exchange telecommunications services in Idaho. *See* Order No. 34135.

In a September 9, 2020 decision memorandum, Staff notified the Commission that the Company had failed to provide Staff with evidence the Company provides basic local exchange service. Staff alleged it sent a letter to the Company on June 4, 2019, requesting the Company provide evidence that it is a provider of basic local exchange service. Staff reported that a Company representative was contacted by phone in August 2019 and confirmed that the letter had been received by the Company. To date, the Company has never provided the requested evidence.

On September 28, 2020, the Commission issued an Order to Show Cause why the Commission should not rescind Order No. 34135 based on the Company’s failure to meet the prescribed conditions for CPCN issuance. *See* Order No. 34788. The Commission set a hearing date of October 20, 2020, allowing the Company to appear in person or telephonically. The Company did not appear or call in for the hearing. On November 6, 2020, the Company filed a

letter requesting the Commission give the Company 90 days to begin providing basic local exchange service.

Having reviewed the record, we rescind Order No. 34135 that granted the Company's application for a CPCN, thereby revoking CPCN No. 526.

### **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 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 Commission served a copy of the Order to Show Cause on the Company via certified mail.

On October 20, 2020, the Commission held the show-cause hearing. No representative of the Company attended the hearing. 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 a copy of the signed certified mail receipt, indicating the Company received a copy of the Order to Show Cause. The second exhibit was a copy of Order No. 26665, which established the CPCN eligibility requirements for Title 62 telephone corporations. Without objection, both exhibits were entered into the record.

### **THE COMPANY'S LETTER**

On November 6, 2020, the Company filed a letter requesting the Commission give the Company 90 days to "implement our local exchange voice services and become compliant with the Commission's order." The Company explained that it missed the October 20, 2020 show-cause hearing because the contact information it had on file with the Commission was outdated. The Company asserted that it is seeking an interconnection agreement with CenturyLink and will file with the Commission an application for approval of the interconnection agreement "within 10 business days."

Regarding the delay in providing basic local exchange service, the Company explained:

In the second quarter of 2019, we received a compelling offer from an Idaho ILEC to buy Fiber Broadband LLC, dba Tru Fiber, by the end of 2019. The closing date of this transaction was subsequently moved back to May 31, 2020, but negotiations fell through when key issues could not be settled. We have not allocated proper resources to our voice services since May, but we fully understand our obligation to offer local exchange services as a condition of our CPCN and we intend to fully comply with the Commission.

### 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 service<sup>1</sup> 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*.

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

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<sup>1</sup> 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).

exchange service. *See* Case No. IGL-T-18-01, Staff Comments; Case No. SLI-T-20-01, Staff Comments.

The Company admits in its November 3, 2020 letter that it is not providing basic local exchange service. The Company also never provided the reports required in Order No. 34135. Furthermore, the Company stated in its letter that it would file with the Commission an application for approval of the interconnection agreement with CenturyLink “within 10 business days.” As of December 3, 2020, the application has not been filed with the Commission. Consistent with Title 62 and this Commission’s established practices, the Company is, therefore, ineligible for a CPCN. *See* Order No. 26665.

Since receiving its CPCN, the Company has repeatedly been reminded by Commission Staff of its obligation to provide basic local exchange service. Based on its November 6, 2020 letter, the Company confirmed that it has never provided basic local exchange service during the two years since it received CPCN No. 526. Despite not providing basic local exchange service, the Company admits “it has been actively building a network in Southeast Idaho....” It would appear, then, that the Company has used its CPCN to gain access to rights of way to build a fiber network. *See Idaho Code* §§ 62-701 to 62-701A.

It has never been the purpose of Title 62 telephone corporation certifications to streamline broadband providers’ access to rights of way. To enjoy the right-of-way access rights outlined in *Idaho Code* § 62-701, a business must be a “telephone corporation” as defined by *Idaho Code* § 62-603(14). If a business is not providing “telecommunication service” by transmitting “switched” information through PSTN assets, it is not a telephone corporation. *See Idaho Code* § 62-603(13); Order No. 34130.

The Company requests 90 days “to implement our local exchange voice services and become compliant with the Commission’s order.” Company’s November 6, 2020 letter. The Company has had over two years and multiple reminders to comply with the Commission’s orders. After being provided an opportunity to appear before us to explain its inaction, the Company failed to appear. To date, the Company has ignored this Commission’s directives and orders. 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. 34135, thereby revoking CPCN No. 526.

**ORDER**

IT IS HEREBY ORDERED that Order No. 34135 is rescinded pursuant to *Idaho Code* § 61-624, effective upon issuance of this Order. As a result, CPCN No. 526 is revoked.

IT IS FURTHER ORDERED that this Order shall be served by certified mail on the registered agent of Fiber Broadband, LLC dba Tru Fiber.

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.

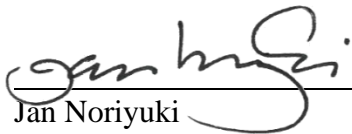
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3<sup>rd</sup> day of December 2020.

  
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PAUL KJELLANDER, PRESIDENT

  
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KRISTINE RAPER, COMMISSIONER

  
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ERIC ANDERSON, COMMISSIONER

ATTEST:

  
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Jan Noriyuki  
Commission Secretary

