

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. 34895
_____)

On December 3, 2020, the Commission issued Order No. 34852 in Case No. FBL-T-20-01. Order No. 34852 rescinded the order in which the Commission granted the application of Fiber Broadband, LLC dba Tru Fiber (Company) for a certificate of public convenience and necessity (CPCN)—thereby revoking CPCN No. 526. *See* Order No. 34135. The Commission revoked CPCN No. 526 because, among other reasons, the evidence in the record established the Company was not providing basic local exchange service, in violation of Order No. 26665.

On December 24, 2020, the Company petitioned for reconsideration. *See* IDAPA 31.01.01.331 through .333. In its Petition for Reconsideration (Petition), the Company asserted it signed an interconnection agreement with CenturyLink on December 9, 2020 and has been providing basic local exchange service since “mid-December.” The Company asked the Commission to reconsider its rescission of Order No. 34135 “to allow the [C]ompany a regulatory path forward to operate as a local exchange carrier consistent with CPCN charter, statute, and regulation.” Company’s Petition at 1.

Now, having considered the record before it, the Commission denies the Company’s Petition.

BACKGROUND

1. The Commission’s Order to Show Cause and October 20, 2020 hearing

On September 28, 2020, the Commission issued an Order to Show Cause and a Notice of Hearing. *See* Order No. 34788. The order 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^[1] of Order No. 34135;

¹ Condition 3 in Order No. 34135 required the Company to provide two brief reports to Commission Staff on February 1, 2019 and August 1, 2019, stating the number of customers receiving basic local exchange service from the Company. To date, Commission Staff has not received these reports. Condition 4 required the Company to “relinquish

- b. Why the Commission should not find the Company violated the CPCN eligibility requirements in Order No. 26665^[2]; 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.

Order No. 34788. The Commission served a copy of the Order to Show Cause on the Company by certified mail.

On October 20, 2020, the Commission held the show-cause hearing. No representative of the Company attended the hearing. Commission Staff entered several exhibits into the record, including a copy of the signed certified mail receipt—indicating the Company received a copy of the Order to Show Cause.

2. *The Company's November 3, 2020 letter*

On November 3, 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.” Company's Letter at 1. 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 was seeking an interconnection agreement with CenturyLink, and that the “application will be filed within 10 business days.” *Id.*

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.

The Company requested 90 days to begin providing basic local exchange service.

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.”

² Consistent with Title 62, Order No. 26665 directs that only a Title 62 telephone corporation that provides basic local exchange service may hold a CPCN.

3. Commission Order No. 34852, revoking CPCN No. 526

On December 3, 2020, the Commission issued Order No. 34852, revoking CPCN No. 526 by rescinding the order in which the Commission approved the Company's Application for a CPCN. *See Idaho Code* § 61-624. The Commission observed that the "Company admits in its November 3, 2020 letter that it is not providing basic local exchange service." Order No. 34852 at 4. The Commission also noted that the Company "has repeatedly been reminded by Commission Staff of its obligation to provide basic local exchange service."³ *Id.*

A copy of the final order was served on the Company by certified mail, and the Commission received the signed certified mail receipt on December 14, 2020.

THE COMPANY'S PETITION

In its Petition for Reconsideration, the Company asserted it is providing basic local exchange service.

We are pleased to report to the Commission that we are currently providing basic local exchange service and we are moving quickly to expand the number of subscribers. *Our first order was placed mid-December.* We have analyzed our market and we fully expect to have expanded our subscriber numbers to more than 100 basic switched telephone service subscribers in the coming months and then continue to grow that number thereafter. Basic telephone service is now available and will be offered and delivered to subscribers in every part of our network.

Company's Petition at 2 (emphasis added).

Additionally, the Company asserted it recently executed an interconnection agreement/resale agreement with CenturyLink. The Company stated that CenturyLink will file the agreement with the Commission for approval.

The Company assured the Commission that, since the Company now offers basic local exchange service, "the [C]ompany will begin making all appropriate contributions and meet all statutory and regulatory reporting requirements." Company's Petition at 2. The Company cited several telecommunications funds to which it would begin contributing and reporting, including the Idaho Universal Service Fund, the Idaho Telecommunications Relay Service, and the Idaho Telecommunications Assistance Program.

³ Commission Staff sent a letter to the Company on June 4, 2019 directing the Company to provide evidence that the Company was providing basic local exchange service. Order No. 34788, Exhibit A (Affidavit of Daniel Klein). In August 2019, Staff spoke with a representative of the Company who confirmed receipt of the June 4, 2019 letter. *Id.*

Rather than rescinding Order No. 34135 and revoking CPCN No. 526, the Company suggested the Commission allow the Company to retain its CPCN and establish a reporting schedule similar to that outlined in Order No. 34135. The Company suggested the reports be due April 1, 2021 and September 1, 2021.

STANDARD OF REVIEW

A person may petition the Commission to reconsider its orders. *See Idaho Code* § 61-626; Rules 331-333 (IDAPA 31.01.01.331-.333). Reconsideration allows the petitioner to bring to the Commission’s attention any question previously determined and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979); Rule 325. The petitioner has 21 days from the date of the final order in which to ask for reconsideration. *Idaho Code* § 61-626(1). The petition must specify why it “contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law.” Rule 331.01. Further, the petition “must state whether the petitioner . . . requests reconsideration by evidentiary hearing, written briefs, comments, or interrogatories.” Rule 331.03. Grounds for reconsideration or issues on reconsideration that are not supported by specific explanation may be dismissed. IDAPA 31.01.01.332. Any answers or cross-petitions must be filed within seven days after the petition was filed. Rule 331.02 and .05.

Once a petition is filed, the Commission must issue an order saying whether it will reconsider the parts of the order at issue and, if reconsideration is granted, how the matter will be reconsidered. *Idaho Code* § 61-626(2). If reconsideration is granted, the Commission must complete its reconsideration within 13 weeks after the date for filing petition(s) for reconsideration. *Idaho Code* § 61-626(2). The Commission must issue its final Order on reconsideration within 28 days after the matter is finally submitted for reconsideration. *Id.*

COMMISSION FINDINGS AND DECISION

The Commission has reviewed the record, including the Commission’s prior orders, the Company’s November 6, 2020 letter and December 24, 2020 Petition, and the hearing transcript. Based on our review, we find the Company’s Petition fails to state why the Commission’s decision in Order No. 34852 was unreasonable, unlawful, erroneous, or not in conformity with the law. Therefore, the Commission denies the Company’s Petition for Reconsideration.

In its Petition, the Company did not assert the Commission erred in any part of its decision. After failing to appear at the scheduled Show Cause hearing and following issuance of our order revoking its CPCN, the Company asserted that it has since begun providing basic local exchange service, receiving its first customer in “mid-December.” Company’s Petition at 2. No document or report was provided that showed evidence of any customers. The Company also asserted it executed an interconnection agreement with CenturyLink on December 9, 2020. No interconnection agreement was provided with its Petition for Reconsideration to substantiate the assertion. Consequently, there is no basis upon which we would reconsider our findings and conclusions in Order No. 34852.

The Company requested in its Petition that the Commission reconsider its decision “to allow the [C]ompany a regulatory path forward to operate as a local exchange carrier consistent with the CPCN charter, statute, and regulation.” Company’s Petition at 1. Essentially, the Company asks the Commission to give it more time to show that it can provide basic local exchange service and comply with the corresponding statutes and regulations.


The Commission issued the Company’s CPCN in August 2018. As a condition of that issuance, the Company was to file a report with the Commission on February 1, 2019 and August 1, 2019. *See* Order No. 34135. Neither report was filed. An additional condition of issuance was that the Company would relinquish its CPCN and all telephone numbers if, within one year of issuance of a CPCN, the Company was not providing local exchange services. *Id.* There is still no evidence in the record that the Company is providing local exchange service to any customers – absent an assertion by the Company without any corresponding evidence. The Company has had since August of 2018 to “operate as a local exchange carrier consistent with the CPCN charter, statute, and regulation.” This Commission revoked its CPCN based on the Company’s non-compliance. No evidence has been provided to refute the basis for our original decision. Because the Company has failed to show how this Commission’s final Order No. 34852 is unreasonable, unlawful, erroneous or otherwise not in conformity with the law, the Company’s Petition for Reconsideration is denied.

ORDER

IT IS HEREBY ORDERED that the Company’s Petition for Reconsideration is denied.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this order may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21st day of January 2021.



PAUL KJELLANDER, PRESIDENT

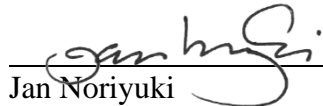


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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