

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF GC PIVOTAL,)	CASE NO. GCP-T-20-01
LLC DBA GLOBAL CAPACITY'S)	
ELIGIBILITY TO HOLD)	ORDER VACATING ORDER NO. 34786
CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY NO.)	ORDER TO SHOW CAUSE
530)	
)	NOTICE OF HEARING
)	
)	ORDER NO. 34822
)	

GC Pivotal, LLC dba Global Capacity (“Company”) holds Certificate of Public Convenience and Necessity (“CPCN”) No. 530. 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. 34484, 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. 530 in December 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 5"). Specifically, in Order No. 34484, 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: February 19, 2020; June 17, 2020; and October 18, 2020. If the Company fails to provide the three reports, the Company shall relinquish its CPCN and all telephone numbers.

The Company has failed to file any of the three reports.

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 5 of Order No. 34484." Order No. 34786. 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 1. However, the Commission did not cite failure to provide basic local exchange service as a claim against the Company. The Commission attempted to serve a copy of the Order to Show Cause on the Company by certified mail, but the copy was sent to an incorrect address.

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. 34786 VACATED

The Commission's previous Order to Show Cause in this case, Order No. 34786, was served on an incorrect address. Therefore, the Company has not yet received notice of the show-

cause hearing. Additionally, Order No. 34786 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 has not provided the reports to date; therefore, there is no evidence the Company is providing basic local exchange service to any of its customers. Because Order No. 34786 was not served on the correct address and did not list a claim that the Company has failed to provide basic local exchange service, the Commission vacates Order No. 34786 and issues this Order in its place.

This Order differs from Order No. 34786 in two respects. First, it adds Claim 2 and requires the Company to appear before the Commission to address both claims. Second, it sets a new date for the show-cause hearing. *See Idaho Code* § 61-616.

CLAIM

1. Violation of Commission Order No. 34484

In Order No. 34484, 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.” *See* Condition 5. The first report was due February 19, 2020; the second report on June 17, 2020; and the third report will be due on October 18, 2020. The Commission received none of the reports.

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. The Commission has failed to supply evidence that it is providing basic local exchange service. In particular, the Company has provided none of the reports required by Order No. 34484—reports designed to inform the Commission whether the Company is providing basic local exchange service.

ORDER

IT IS HEREBY ORDERED that the previous Order to Show Cause in this case, Order No. 34786, 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 17, 2020, AT 2:30 PM (MDT)**, to show cause:

- a. Why the Commission should not find the Company violated Condition 5 of Order No. 34484;
- 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. 34484 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. At the hearing, the Commission may allow the Company and/or Commission Staff to call witnesses and otherwise present evidence on the claims against the Company.

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* ORDER TO SHOW CAUSE
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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 23rd day of October 2020.



PAUL KJELLANDER, PRESIDENT

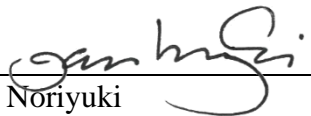


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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