

34786 in two respects. First, it added Claim 2 and required the Company to appear before the Commission to address both Claims 1 and 2. Second, it set a new date for the show-cause hearing.

On November 11, 2020, the Company filed all three reports. The reports indicated the Company has had 13 to 12 basic local exchange customers since February 19, 2020. On November 17, 2020, the Commission held a show-cause hearing. While a representative of the Company did not appear at the show-cause hearing, a representative of a firm that provides compliance services for the Company appeared telephonically.

On December 14, 2020, the Company filed a letter addressing the claims in the Commission's show-cause order.

Having reviewed the record, we find the Company is providing basic local exchange service. We therefore conditionally allow the Company to retain its CPCN.

ORDER TO SHOW CAUSE

The Order to Show Cause required the Company to appear before the Commission 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.

Order No. 34822. The Commission served a copy of the Order to Show Cause on the Company via certified mail.

On November 17, 2020, the Commission held the show-cause hearing. While a representative of the Company did not appear¹, Laura Garfinkel—an employee of a firm that provides regulatory consulting services to the Company—appeared telephonically and was allowed to make a statement for the record in the Company's interest. Ms. Garfinkel explained that the Company is providing basic local exchange service to approximately 13 customers, and that the three reports were not filed by the required dates because of an internal miscommunication. Ms. Garfinkel assured the Commission that steps have been taken to ensure the error will not

¹ See IDAPA 31.01.01.043 (describing the requirements for representation of parties before the Commission).

happen again. The Commission informed Ms. Garfinkel that her statement could not be used as a basis for a decision by the Commission because she is not an authorized representative of the Company. The Commission recommended Ms. Garfinkel encourage an authorized representative of the Company to file a statement with the Commission. The Commission left the record open following the hearing in order to allow the Company additional time to make a filing.

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. Mr. Klein's affidavit concerned his efforts to verify whether the Company is providing telecommunication service. The second exhibit was a copy of the signed certified mail receipt, indicating the Company received a copy of the Order to Show Cause issued by the Commission on October 23, 2020.

THE COMPANY'S LETTER

On December 14, 2020, the Company filed a letter and updated reports². The Company explained that the reports were not filed by the dates required because of an internal miscommunication, and that the Company provides basic local exchange service to approximately 12 to 14 customers in Idaho. The Company asserted it would promptly file any "back filings related to the [Idaho Universal Service Fund] and TRS...and...all filings related to the same shall be filed on and in accordance with the Commission rules and schedules." Company Letter at 2. The Company asserted it would take extra care going forward to remain in compliance with the Commission's rules and requirements.

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

² The reports received on November 11, 2020 contained an error: the number of basic local exchange customers for the June 17, 2020 report was left blank. The Company's resubmission of these forms corrected this error. The June 17, 2020 report indicates the Company had 12 basic local exchange customers.

local exchange service³ 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 exchange service. *See Case No. IGL-T-18-01, Staff Comments; Case No. SLI-T-20-01, Staff Comments*.

Based on the Company's reports and representations in its December 14, 2020 letter, we find the Company is providing basic local exchange service. Since receiving its CPCN, the Company has been providing basic local exchange service to 12 to 13 customers. Therefore, the Company continues to meet the CPCN eligibility requirements in Order No. 26665.

Nevertheless, the Company violated Condition 5 of Order No. 34484 by failing to provide the three reports in a timely manner. As these reports are the primary means by which the Commission determines whether a telephone corporation continues to be eligible to hold a CPCN, these reports are essential and must be filed by the required deadlines. To ensure the Company continues to provide basic local exchange service going forward, we find it in the public interest to require the Company to provide three reports to the Commission indicating the number of basic local exchange customers it has and the services being offered. The reports will be due on: May 17, 2021, September 20, 2021, and January 17, 2022. Furthermore, it is the responsibility of each

³ 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).

regulated utility to be aware of and compliant with this Commission's pertinent statutes, rules and orders. All of these things are accessible not only by visiting the Commission's office but also on the puc.idaho.gov website. We direct the Company to review its rights and obligations so that the present circumstances can be avoided in the future.

ORDER

IT IS HEREBY ORDERED that the Company shall retain its CPCN on the following condition: the Company is directed to provide three reports to the Commission indicating the number of basic local exchange customers it has and the services being offered. The reports shall be due on:

- a. May 17, 2021;
- b. September 20, 2021; and
- c. January 17, 2022.

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.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13th
day of January 2021.



PAUL KJELLANDER, PRESIDENT

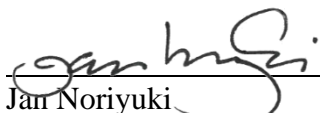


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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