

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF OPTIX MEDIA, ) CASE NO. OML-T-20-01**  
**L.L.C.’S ELIGIBILITY TO HOLD )**  
**CERTIFICATE OF PUBLIC CONVENIENCE ) ORDER TO SHOW CAUSE**  
**AND NECESSITY NO. 504 )**  
) **NOTICE OF HEARING**  
)  
) **ORDER NO. 34787**

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Optix Media, L.L.C. (“Company”) holds Certificate of Public Convenience and Necessity (“CPCN”) No. 504. 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. *See Idaho Code* § 62-605(5)(b).

**BACKGROUND**

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*.

The Commission issued the Company CPCN No. 504 in April 2012 subject to several conditions. One of these conditions (“**condition 4**”) was that the Company would “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 as defined by *Idaho Code* § 620603(1).” *Order No. 32516 at 2*.

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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).

In a September 9, 2020 decision memorandum, Staff asserted that the Company has failed to provide Staff with evidence that 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 alleged that it spoke with a Company representative by phone in August 2019 and confirmed the letter had been received by the Company. *See* Klein Aff. at 2, **Exhibit A**. But 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. 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.<sup>2</sup> 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

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<sup>2</sup> 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.

representative who confirmed receipt of the letter. *Id.* at 2. Staff never received the requested evidence. *Id.*

2. *Violation of Commission Order No. 32516*

Order No. 32516 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 as defined by *Idaho Code* § 62-603(1).” 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 violated condition 4 of Order No. 32516.

**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 10:30 AM (MDT)**, to show cause:

- a. Why the Commission should not find the Company violated condition 4 of Order No. 32516;
- 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. 32516 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.

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:

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IDAHO PUBLIC UTILITIES COMMISSION  
P.O. BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0338 (Telephone)  
(208) 334-3762 (FAX)  
[secretary@puc.idaho.gov](mailto: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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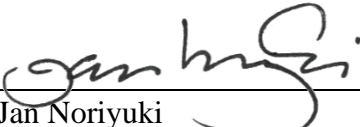
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 28<sup>th</sup>  
day of September 2020.

  
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PAUL KJELLANDER, PRESIDENT

  
\_\_\_\_\_  
KRISTINE RAPER, COMMISSIONER

  
\_\_\_\_\_  
ERIC ANDERSON, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jan Noriyuki  
Commission Secretary

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF OPTIX MEDIA, )  
L.L.C.'S ELIGIBILITY TO HOLD ) CASE NO. OML-T-20-01  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY NO. 504 ) AFFIDAVIT OF DANIEL KLEIN  
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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. In Order No. 32516, the granting of Optix Media, L.L.C.'s CPCN was conditioned upon the following: "Optix Media agrees 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 as defined by *Idaho Code* § 62-603(1)." In the spring of 2019, my colleague Carolee Hall informed me that she suspected Optix Media was not providing basic local exchange service. Ms. Hall, now retired, was a Utility Analyst at the time.
4. On June 4, 2019, I sent a letter to the Company's registered agent, Timothy May, at 150 South Main Street, Rockland, Idaho, 83271. 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 cancel [the Company]'s CPCN."
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 23<sup>rd</sup> day of September 2020.



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

