

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)
AND NECESSITY NO. 504) ORDER NO. 34851
_____)

Optix Media, L.L.C. (“Company”) was issued Certificate of Public Convenience and Necessity (CPCN) No. 504 in April 2012. 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 a final and complete price list with the Commission containing all of its rates, terms and conditions; 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 offering local exchange telecommunications services in Idaho. *See* Order No. 32516.

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. 32516 based on the Company’s failure to meet the prescribed conditions for CPCN issuance. *See* Order No. 34787. 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.

Having reviewed the record, we rescind Order No. 32516 that granted the Company’s application for a CPCN, thereby revoking CPCN No. 504.

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 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 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.

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 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.*

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).

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.

The Company, after repeated attempts by Staff and this Commission, has failed to provide any evidence or argument that it is providing basic local exchange service to customers. Consistent with Title 62 and this Commission's established practices, the Company is, therefore, ineligible for a CPCN. *See Order No.* 26665.

Furthermore, 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)." To date, the Company has not responded to inquiries or orders of this Commission. Indeed, a quick internet search of the Idaho Secretary of State's website reveals that the business entity "Optix Media, L.L.C." was administratively dissolved over a year ago. *See IDAPA* 31.01.01.263.01(a) and (b). By any reasonable inference or assumption, the Company has no present intent or ability to provide basic local exchange service to customers in Idaho. Based on the undisputed facts and evidence in the record, we find it fair and in the public interest to rescind our Order No. 32516, thereby revoking CPCN No. 504, effective upon issuance of this Order.

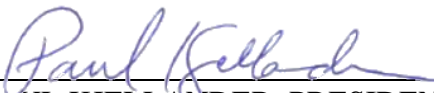
ORDER

IT IS HEREBY ORDERED that Order No. 32516 is rescinded pursuant to *Idaho Code* § 61-624, effective upon issuance of this Order. As a result, Order No. 504 is revoked.

IT IS FURTHER ORDERED that this Order shall be served by certified mail on the registered agent of Optix Media, L.L.C.

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 3rd day of December 2020.



PAUL KJELLANDER, PRESIDENT

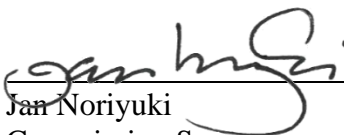


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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