

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: MATT HUNTER
DEPUTY ATTORNEY GENERAL

DATE: SEPTEMBER 9, 2020

SUBJECT: IN THE MATTER OF THE INVESTIGATION OF OPTIX MEDIA, L.L.C.'S
ELIGIBILITY TO HOLD CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY NO. 504; CASE NO. OML-T-20-01.

Optix Media, L.L.C. ("Company") holds Certificate of Public Convenience and Necessity ("CPCN") No. 504. Commission Staff has been unable to determine whether the Company is providing basic local exchange service, and therefore recommends the Commission commence proceedings to require the Company to show cause why it remains eligible for a CPCN.

BACKGROUND

On April 11, 2012, the Commission approved the Company's application for a CPCN, subject to several conditions. One condition was that the Company would "relinquish its Certificate 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* § 62-603(1)." Order No. 32516 at 2. On April 17, 2012, the Commission issued CPCN No. 504 to the Company.

On June 4, 2019, Staff sent a letter requesting the Company provide evidence that it provides basic local exchange service as defined by *Idaho Code* § 62-603(1). While a representative of the Company did speak with Staff by phone several weeks after Staff's letter was sent, the Company has provided no evidence that it provides basic local exchange service.

STAFF RECOMMENDATION

Staff recommends the Commission commence a proceeding directing the Company to show cause why it remains eligible to hold a CPCN. A Title 62 telephone corporation is eligible

for a CPCN only if it provides basic local exchange service. *See* Order Nos. 26665 and 34130. The Company has provided no evidence—either in compliance with the Commission’s 2012 order or in reply to Staff’s 2019 letter—that it provides this service.

Staff believes Modified Procedure, IDAPA 31.01.01.201 through .204, is appropriate for this proceeding and affords ample due process to the Company. The question is simple: does the Company provide basic local exchange service? If the Company does, evidence of this service should be easy to provide to the Commission. If the Company does not provide this service, then it is ineligible to hold a CPCN. Modified Procedure is well suited for such an inquiry. If, however, the Company wants a formal hearing it may request one. *See* IDAPA 31.01.01.203.

Therefore, Staff recommends the Commission issue a Notice of Complaint and Modified Procedure, requiring the Company and any interested persons to provide any written comments to Staff’s Complaint by October 15, 2020. Staff also recommends the Commission direct Staff to provide any reply comments by October 29, 2020.

COMMISSION DECISION

Does the Commission wish to:

1. Issue a Notice of Complaint and Modified Procedure, setting an October 15, 2020 comment deadline for the Company and any interested persons, and an October 29, 2020 reply comment deadline for Staff?
2. If not, does the Commission wish to:
 - a. Issue a Notice of Complaint;
 - b. Order the Company to appear before the Commission to show cause why the Company remains eligible to hold a CPCN; and
 - c. Set a date for the show-cause hearing?



Matt Hunter
Deputy Attorney General