



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of Application of U. S. Telecom Long Distance, Inc. (U-5920-C) for a Certificate of Public Convenience and Necessity to Provide Resold Commercial Local Exchange and Interexchange Telecommunications Services Within the State of California

A. 11-01-025
(Filed January 26, 2011)

**PROTEST OF THE CONSUMER PROTECTION AND SAFETY
DIVISION TO THE APPLICATION OF
U. S. TELECOM LONG DISTANCE, INC.**

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's Rules of Practice and Procedure (Rules), the Commission's Consumer Protection and Safety Division (CPSD), hereby protests Application (A.)11-01-025 (Application) of U. S. Telecom Long Distance, Inc. (USTLD) for a Certificate of Public Convenience and Necessity (CPCN). Applicant USTLD is applying for authority to provide "specialized discretionary resold local intra-exchange private line telecommunications services in the AT&T California service territory." (Application, p. 2.) However, Applicant failed to report Federal Communications Commission (FCC) violations and sanctions as well as enforcement actions taken by other states in Paragraphs 17 and 18 of its Application. In addition, the CPUC's Consumer Affairs Branch has received 60 consumer complaints regarding slamming and cramming since January of 2009. These complaints and omissions are cause for concern and should be the bases for Commission scrutiny of the Application.

II. BACKGROUND

USTLD obtained a CPCN¹ on January 5, 1998 under the business name Business Calling Plan, Inc. Through this new application, A.11-01-025, USTLD requests authority to provide specialized discretionary intra-exchange dedicated point-to-point private line services for commercial subscribers as a competitive local carrier. USTLD further seeks to have its existing interexchange registration license consolidated authorizing applicant to provide combined local and interexchange telecommunications services under a single CPCN.

Applicant is a privately-held corporation organized under the laws of the State of Nevada on August 13, 1997 as Business Calling Plan, Inc. According to its Application in March 1998, USTLD changed its name to Corporate Calling Services, Inc., and then in July 2001 changed its name to U. S. Telecom Long Distance, Inc.

III. BASIS OF PROTEST

A. Rule 1.1 Violations

Commission Rule of Practice and Procedure, Rule 1.1, obligates any entity that transacts business with the Commission to “never mislead the Commission or its staff by an artifice or false statement of fact or law.”

In Paragraph 17, Applicant attests that neither it nor any affiliate has been sanctioned by the Federal Communications Commission (FCC) or any law enforcement or state regulatory agency for failure to comply with any regulatory statute, rule, or order.

The Applicant further certified in Paragraph 18 that no officer or director, who held one of these positions with another telecommunications carrier, has been found criminally or civilly liable for any actions involving misrepresentations to consumers.

¹ Decision 98-01-028.

Furthermore, the Commission has held that CPCNs must disclose at least as much background and history as that required of the NDIEC Application for Registration License. In D.08-12-027, the Commission stated:

“We reject ATC’s argument that the disclosure requirements of D.97-06-107 for expedited Registration Process applicants do not apply to CPCN applicants who do not use the expedited Registration Process. Regardless of which type of application is used, the issue is the same – the fitness of the applicant to provide telecommunications services in California. The question of fitness is broad and should be no different for the traditional CPCN applicant as opposed to the Registration Process applicant.”²

On Question 8 of the Application for Registration License, applicants are required to verify that applicant has not been “found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries.” Question 8 further requires applicant to verify that its officers or directors have not “been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others.” Section (h) of Question 8 requires applicant to verify that its officers and directors have not “entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.”

However, USTLD’s certifications in Paragraphs 17 and 18 are false. CPSD uncovered information regarding sanctions and/or fines imposed on the company.

CPSD found three FCC slamming violations related to the Applicant. According to the FCC’s website, on March 25, 2010, the FCC ruled against the Applicant for slamming a consumer’s telecommunication service.³ Two other

² D.08-12-027, p.8.

³ FCC Case IC No. 09-S0296678.

instances of FCC slamming violations were uncovered in reviewing a class action lawsuit: one dated January 31, 2006 and a second dated July 23, 2004. In both cases, Applicant was found to have violated the FCC's slamming rules for not obtaining clear verification from complainant and ordered to remove charges.⁴

CPSD found a Settlement Agreement and Joint Motion for Approval of Settlement Agreement in the State of Iowa, Dept. of Commerce, before the Iowa Utilities Board, dated April 7, 2003, involving a \$500 civil monetary penalty in accordance with the provisions of Iowa's anti-slamming law, in the amount of \$500.00 and a requirement to credit the affected consumer for the entire amount sought.⁵

CPSD found a Notice of Unlawful Trade Practices and Assurance of Voluntary Compliance in the State of Oregon, where a settlement was reached and Applicant agreed to pay \$18,000 without admitting to a violation concerning a violation of Oregon's no-call statutes.⁶

CPSD also found an Assurance of Voluntary Compliance with the Attorney General for the Commonwealth of Pennsylvania, who investigated Applicant for violating the Consumer Protection Law and Telemarketing Act for soliciting consumers on the Do-Not-Call list; failing to disclose the telemarketer's name; failing to disclose the telephone number and address of carrier; and making statements that were false or misleading. Applicant entered settlement without admission of guilt, changed telemarketing procedures per the settlement, and paid a civil penalty in the amount of \$70,000, and \$5,000 for costs to be used for future consumer protection and public protection purposes.

⁴ Case No. BC403597 Class Action with the Superior Court of State of California for the County of Los Angeles, filed 12/10/2008.

⁵ State of Iowa, Department of Commerce Before the Iowa Utilities Board, Docket No. C-03-28 (FCU-03-15).

⁶ State of Oregon, Dept. of Justice, Case No. 03C19753, filed on 10/21/2003.

CPSD found a civil class action suit in the Superior Court of California, County of Los Angeles against: Billing Concepts (USBI); Zero Plus Dialing, National Access Long Distance, and U.S. Telecom Long Distance, Inc., filed on December 10, 2008, Case # BC403597. This is a consumer action brought by consumers suing for damages, restitution, and equitable relief based upon allegations of defendants' unfair and fraudulent business practice of "cramming" (the unauthorized addition of charges to a consumer's telephone bill) and "slamming" (the unauthorized changing of a consumer's long distance provider). The complaint seeks legal remedies within seven categories: (1) Consumer Legal Remedies Act, California Civil Code section 1750 *et. seq*; (2) Deceit; (3) Money Had and Received; (4) Unjust Enrichment; (5) Imposition of a Constructive Trust; (6) Unfair Business Practice – California Business and Professions code section 17200; and (7) False Advertising – California Business and Professions code section 17200. The case is still pending with the next hearing date scheduled for June 30, 2011.

By attesting that it has not been sanctioned by the FCC, and that none of its officers who held the position of officer with another carrier have been found civilly liable, Applicant has violated Rule 1.1.

B. Consumer Complaints

CPSD has uncovered numerous complaints on internet consumer complaint forums and databases. The Commission's Consumer Affairs Branch database shows over 60 consumer complaints and inquiries concerning USTLD for the period beginning January 2009 to date. Most of the complaints and inquiries allege cramming and/or slamming by USTLD. Rip-off-report.com has 1 slamming complaint about USTLD posted on July 27, 2009.⁷

⁷ <http://www.ripoffreport.com/telephone-companies/u-s-telecom-long-dis/u-s-telecom-long-distance-cons-7a35a.htm>

IV. CONCLUSION

Based on the foregoing Rule 1.1 violations, consumer complaints against USTLD, and the civil proceedings alleging misrepresentations to consumers, CPSD believes that this Application requires further review by the Commission. CPSD will seek further information from the Applicant concerning the issues raised in this protest. Specifically, CPSD will seek further documentation regarding the nature and background of the sanctions or fines imposed above by the FCC and other states, the history of civil litigation related to slamming and cramming, and will request explanations for the consumer complaints discovered. CPSD respectfully requests that the Commission give considerable weight to the issues presented in this protest before making its final decision about the Application.

Respectfully submitted,

/s/ TRAVIS T. FOSS

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March 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **PROTEST OF CONSUMER PROTECTION AND SAFETY DIVISION TO THE APPLICATION OF U.S. TELECOM LONG DISTANCE, INC. in A.11-01-025** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on March 7, 2011 at San Francisco, California.

/s/ NANCY SALYER
NANCY SALYER

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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A.11-01-025

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