

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**06-27-11
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June 27, 2011

Agenda ID #10523
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 11-04-005

This is the proposed decision of Administrative Law Judge (ALJ) Kelly A. Hymes. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Hymes at khy@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ MICHELLE COOKE for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF ALJ HYMES** (Mailed 6/27/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of America Net, LLC for a Certificate of Public Convenience and Necessity to Provide Resold Interexchange Telecommunications Services within the State of California.

Application 11-04-005
(Filed April 6, 2011)

**DECISION GRANTING MOTION TO WITHDRAW
THIS APPLICATION WITH CONDITIONS**

1. Summary

America Net, LLC. (Applicant) filed this application, seeking authority to provide resold non-facilities based interexchange telecommunications services statewide. The Commission's Consumer Protection and Safety Division (CPSD) protested the application. Subsequently, Applicant filed a Motion to Withdraw Application to which CPSD filed a response. The Motion to Withdraw Application is granted, with this condition: future filings by Applicant or its principals must disclose the circumstances of this proceeding and its withdrawal.

2. Procedural Background

On April 6, 2011 America Net, LLC (Applicant) filed Application (A.) 11-04-005 with the Commission, seeking approval of a certificate of public convenience and necessity to provide competitive non-facilities based interexchange telecommunications services throughout the state of California. Applicant is a privately-held limited liability corporation located in Los Angeles, CA.

The Commission's Consumer Protection and Safety Division (CPSD) timely filed a protest to the application on May 16, 2011. CPSD protested the application based on two allegations: 1) America Net failed to disclose certain information required in the application and 2) America Net has past violations for slamming and a possible link to a company with several slamming¹ complaints on file with the Commission.

On May 17, 2011, the Commission's Chief Administrative Law Judge (ALJ) issued a notice scheduling a pre-hearing conference for June 15, 2011. The Applicant formally filed a Motion to Withdraw Application (Motion) on June 7, 2011. The ALJ emailed the parties cancelling the Prehearing Conference and limiting the time to respond to the Motion.

3. Motion to Withdraw

On June 7, 2011, Applicant formally filed a Motion to Withdraw Application (Motion) with the Commission. Applicant alleged invasive, overly burdensome and unrelated information requests by CPSD. Applicant further alleged mischaracterization by CPSD of the information provided by Applicant. America Net concluded that the "expenditure of time and resources necessary to respond or object to these intrusive and burdensome requests no longer justifies the benefit of pursuing service in the State of California."²

On June 14, 2011, CPSD filed its response to the Motion. While CPSD did not object to the Motion, it requested that America Net and its principals be

¹ "Slamming" is the unauthorized switching of a subscriber's telephone service to another carrier and is prohibited by Public Utilities Code Section 2889.5.

² Motion to Withdraw, America Net, June 7, 2011, p. 2.

required to disclose the circumstance of this proceeding in all future applications. CPSD alleged evidence of possibly serious violations by America Net and mischaracterization by America Net of CPSD's investigation. CPSD contends that it is charged with ensuring the protection and safety of California consumers which includes thoroughly examining applications for operating authority.

3. Discussion

As an arm of the Commission, CPSD shall exercise all powers of investigation granted to the commission.³ We agree that CPSD is charged with investigating potential telephone corporations to ensure the financial viability of the corporation and to ensure no prior history of fraud.

America Net claims invasive, overly burdensome and unrelated information requests by CPSD. While the information gathering may seem burdensome to the Applicant, we find no evidence of invasive or unrelated information requests in this proceeding. We agree that CPSD's investigative processes should be thorough in order to protect California consumers.

We grant America Net's Motion to Withdraw Application. While we draw no conclusions as to the allegations of CPSD, we agree that the information developed in this proceeding should be disclosed in any future application by America Net or its principals. We therefore require America Net and its principals to disclose in any future application to this Commission the fact of the above-referenced Application, and the circumstances of its withdrawal.

³ Public Utilities Code Section 309.7 (b).

4. Comments on Draft Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Catherine J.K. Sandoval is the Assigned Commissioner, and Kelly A. Hymes is the assigned ALJ in this proceeding.

Findings of Fact

1. Public Utilities Code Section 1013 (d) requires that prior to designating any telephone corporation for registration status, the Commission shall adopt rules to verify the financial viability of the corporation and verify that the officers of the corporation have no prior history of committing fraud on the public.
2. Public Utilities Code Section 309.7 (b) provides that CPSD shall exercise all powers of investigation granted to the Commission.
3. CPSD is charged with ensuring the protection and safety of California consumers.
4. CPSD is charged with investigating potential telephone corporations to ensure the financial viability of the corporation and to ensure no prior history of fraud.

Conclusions of Law

1. The Motion to Withdraw the Application filed by America Net, LLC should be granted conditionally.
2. Any future filings by America Net, LLC or its principals should include disclosure of the circumstances of this proceeding and its withdrawal.

O R D E R

IT IS ORDERED that:

1. The motion of America Net, LLC to dismiss Application 11-04-005 is granted, conditionally.
2. Future filings by America Net, LLC or representatives of America Net, LLC shall disclose the circumstances of this proceeding and its withdrawal.
3. Application 11-04-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.