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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Broadvox-CLEC, LLC for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Local Exchange and Interexchange Telecommunications Services within California	Application 09-06-004 (Filed June 4, 2009)

ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S JOINT RULING AND SCOPING MEMO

This ruling sets the schedule for the proceeding and determines its scope.

Background

Broadvox is a Delaware limited liability company, which has its principal place of business located in Cleveland, Ohio. Broadvox has registered with the California Secretary of State and is authorized to conduct intrastate business in California.

Broadvox filed this application for a certificate of public convenience and necessity (CPCN) authorizing the company to provide limited facilities-based and resold telecommunications services in the service territories of Pacific Bell, Verizon California Inc., Roseville Telephone Company, and Citizens Telephone Company, and interexchange services statewide on June 4, 2009. The application states that Broadvox will initially resell local exchange and interexchange services, and will also provide local service utilizing unbundled network elements purchased from the incumbent local exchange carriers. All services will be routed solely over facilities owned by other certificated carriers.

Applicant does not plan to construct or extend any facilities pursuant to this application.

In the application, Broadvox certified under penalty of perjury that:

1. Neither Broadvox, any affiliate, officer, director, partner, nor owner of more than 10 percent of Broadvox, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state or regulatory agency for failure to comply with any regulatory statute, rule or order; and

2. No affiliate, officer, director, partner, or person owning more than 10 percent of Applicant, or anyone acting in such a capacity whether or not formally appointed, held one of these positions with a telecommunications carrier that filed for bankruptcy, or has been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of § 17000 et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, and to the best of Applicant's knowledge, is not currently under investigation for similar violations.

On July 9, 2009, Consumer Protection and Safety Division (CPSD) filed a protest to this application, on the grounds that some of the officers of Broadvox have held or currently hold officer positions with other telecommunications carriers that have been sanctioned for regulatory violations in other states.[1]

On August 18, 2009, the parties filed a Joint Case Management Statement (Statement), which states that CPSD had uncovered numerous violations of

[1] As described in CPSD's protest, these regulatory violations generally consisted of failure to file required reports, late filing of required reports, and failure to pay required fees.

regulatory requirements in other jurisdictions by telecommunications carriers owned or controlled by the officers, directors, or shareholders of Broadvox that were not disclosed by Broadvox in the application. In addition to other regulatory problems, the Statement notes that Mr. Engin Yesil, who owns 16.96 percent of Broadvox, served as either an officer, manager or officer of several telecommunications carriers, NeTel, Inc. (d/b/a Go 2 Telecom, Inc. and Tel 3, Inc.), Intelligent Switching and Software, Inc. (ISS), Netra, Inc., and Radiant Telecom, Inc. (Radiant), which had engaged in extensive regulatory violations and had their certifications revoked or cancelled by a number of states.[2] According to the Statement, in 2008, as a result of a formal complaint filed by APCC Services, Inc. (APCC), the FCC ordered ISS to pay damages to APCC in the amount of $574,073.07, plus interest, based on ISS' violation of payphone compensation rules.[3] In addition, NeTel, Inc., for which Mr. Yesil serves as president, director, secretary, and treasurer, had filed for bankruptcy in Florida in 1998, and Broadvox did not disclose this fact in its application.

According to the Statement, in February 2009, Broadvox filed litigation against Mr. Yesil for breach of contract in the U. S. District Court in Ohio, in a law suit which included claims of fraud and negligent misrepresentation.

Broadvox contends that its nondisclosure of these issues was inadvertent.

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[2] Among other revocations, on August 21, 2008, in Resolution T-17155, this Commission revoked Radiant's CPCN, based on the company's failure to file required reports.

[3] See 2008 FCC LEXIS 4310.

A prehearing conference (PHC) was held before the assigned Administrative Law Judge (ALJ), Myra J. Prestidge, on August 24, 2009. The parties later reached agreement regarding settlement of the issues in this proceeding. The parties filed a joint motion for Commission adoption of the Settlement Agreement on November 30, 2009. In response to a ruling by the assigned ALJ, Broadvox filed additional information regarding the financial status of the company on March 30, 2010.

The key terms of the Settlement Agreement are as follows:

- **Broadvox's Admission of Violation of Rule 1.1**. Broadvox admits that its failure to disclose the NeTel, Inc. bankruptcy and the other past regulatory problems of Broadvox affiliates in which Mr. Yesil has an ownership interest or a management role violated Rule 1.1,[4] [5] but states that this violation was inadvertent. The Settlement Agreement shall not be construed as any further admission of liability or wrongdoing by Broadvox.

[4] All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

[5] Rule 1.1 states: 1.1. (Rule 1.1) Ethics. Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

- **Filing of Amendment to this Application by Broadvox**. Broadvox will file an amendment to this application, which contains more complete disclosures regarding past regulatory problems of its affiliates and the NeTel bankruptcy;
- **Payment of $5,000 Fine by Broadvox**. Broadvox will pay a $5,000 fine based on its violation of Rule 1.1., within 10 days of the issuance of a Commission decision which grants Broadvox's application for a CPCN. This requirement shall be included as an ordering paragraph in any Commission decision approving the amended application in this docket;
- **Verification that Engin Yesil No Longer Has Ownership or Management Role in Broadvox**. Broadvox will provide proof to CPSD that Mr. Engin Yesil no longer has any legal, equitable, or beneficial interest in Broadvox.
- **Withdrawal of CPSD's Protest**. If Broadvox meets the above conditions, CPSD will withdrawn its protest to the amended application.
- **Broadvox's Payment of Fine is Full Settlement of all costs incurred by Commission and CPSD in this Matter**. After payment of the $5,000 fine as stated above, the Settlement Agreement shall release Broadvox from, and will constitute a full settlement of, any and all costs, direct or indirect, presently known or unknown, accruing to or incurred by the Commission, including without limitation CPSD, during the course of its investigation and review in this proceeding.

- **Subsequent Enforcement Actions against Broadvox**. If the Commission approves the Settlement Agreement, CPSD shall neither initiate nor continue any enforcement action or seek any further administrative or other penalties against Broadvox based on the nondisclosures cited above. This provision shall not apply if Broadvox breaches the Settlement Agreement or the Commission order approving it. This provision shall not prohibit the Commission from considering the Rule 1.1 violation admitted by Broadvox in the Settlement Agreement, if the Commission finds that Broadvox commits subsequent violations of Rule 1.1, other Commission Rules and regulations, or sections of the Public Utilities Code applicable to Broadvox's operations.
- **Violations of Settlement Agreement.** Each violation of the Settlement Agreement shall constitute a separate violation, which entitles the Commission to take any necessary action to enforce its orders.
- **Settlement Agreement is not Commission precedent**. Except as set forth above, the Settlement Agreement shall not constitute approval of, or precedent regarding, any principle or issue in this or any future proceeding.

Categorization and Need for a Hearing

In Resolution ALJ 176-3246, dated June 18, 2009, the Commission preliminarily categorized this proceeding as ratesetting and determined that no hearing is necessary. We confirm the categorization of this proceeding as ratesetting. The need for an evidentiary hearing will be determined by the

assigned ALJ in this matter after Broadvox has filed its amendment to the complaint and a PHC on the amended application is held.

Ex Parte Communications

Ex parte communications are permitted in ratesetting proceedings subject to the requirements of Rule 8.2 and must be reported pursuant to Rule 8.3. Article 8 of the Commission Rules, regarding ex parte communications, is attached as Exhibit A. If parties have questions regarding the rules governing ex parte communications, please contact the Commission Public Advisor's Office by phone at (866) 849-8390 or by e-mail addressed to public.advisor@cpuc.ca.gov.

Scope of the Proceeding

The issues to be addressed in this proceeding are:

1. Whether the Settlement Agreement proposed by the parties should be adopted; and
2. Whether the Commission should grant or deny the application of Broadvox for a CPCN authorizing the company to provide limited facilities-based and resold telecommunications services in California.

Schedule

The schedule in this proceeding is as follows to date. The assigned ALJ shall further determine the schedule after Broadvox has filed an amendment to the application, and after conducting a prehearing conference with the parties to discuss the amended application, the need for a hearing, and the schedule for adjudicating the amended application.

Date	Event
June 4, 2009	Application Filed (Already occurred)
July 9, 2009	Protest by CPSD (Already occurred)

August 18, 2009	Filing of joint case management statement by parties (Already occurred)
August 24, 2009	Prehearing conference (Already occurred)
November 30, 2009	Filing of joint motion for approval of Settlement Agreement by parties (Already occurred)
To be determined	Issuance of Commission decision on Settlement Agreement.
No later than 30 days after issuance of Commission decision on Settlement Agreement	Filing of amended application with disclosures required by Settlement Agreement (if the Commission approves the Settlement Agreement with the requirement for the filing of an amendment.)
No later than 60 days after filing of amendment to application	Second prehearing conference to discuss amendment to application, need for an evidentiary hearing, and schedule for remainder of this proceeding.
Statutory deadline for completion of this proceeding by Commission	November 20, 2011 (18 months after issuance of this ruling).

Filings and Service of Documents

All documents required to be filed in the proceeding shall be filed with the Commission Docket Office in accordance with the Commission Rules of Practice and Procedure (Rules). The parties may contact the Commission Public Advisor's Office at (866) 849-8390 or public.advisor@cpuc.ca.gov for assistance with procedural questions. Our Rules are also posted on our website at www.cpuc.ca.gov.

Please note that prepared testimony is to be served on the other party and submitted to the assigned ALJ, but should not be filed with the Docket Office.

The parties shall serve all prepared testimony and other documents required to be filed in this proceeding on each other by the deadlines stated in this ruling by personal delivery, facsimile, overnight mail, or by e-mail. The parties shall comply with Rule 1.10 regarding the service of documents by e-mail.

Submittal of Documents to Assigned ALJ

The parties shall submit a copy of all documents filed with the Docket Office and/or served on the opposing party to the assigned ALJ by no later than the deadlines stated in this ruling by overnight mail, in-person delivery, facsimile, or e-mail. If e-mail delivery is used, the parties shall also send a hard copy to the assigned ALJ by no later than the deadline for filing or serving the document. Documents may be mailed directly to the assigned ALJ at 505 Van Ness Avenue, Room 5041B, San Francisco, CA 94102. The parties may also fax documents to the assigned ALJ at (415) 703-1723 or e-mail them to tom@cpuc.ca.gov.

Exhibits

The parties shall comply with Rule 13.7 regarding exhibits.

Designation of Presiding Officer

Administrative Law Judge Myra J. Prestidge will be the presiding officer.

Therefore, IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein. The assigned ALJ shall further determine the schedule and the need for an evidentiary hearing after Broadvox has filed an amendment to the application as required by the Settlement Agreement (if the Commission adopts the proposed decision approving the Settlement Agreement).

3. The presiding officer will be Administrative Law Judge Myra J. Prestidge.

4. This ruling confirms that this proceeding is categorized as a ratesetting matter.

5. Ex parte communications in this proceeding are permitted, subject to the requirements of Rule 8.2, and must be reported pursuant to Rule 8.3.

Dated May 20, 2010, at San Francisco, California.

/s/ JOHN A. BOHN	/s/ MYRA J. PRESTIDGE
John A. Bohn	Myra J. Prestidge
Assigned Commissioner	Administrative Law Judge

Exhibit A

Article 8, Commission Rules of Practice and Procedure regarding Ex Parte Contacts

ARTICLE 8. COMMUNICATIONS WITH DECISIONMAKERS AND ADVISORS

8.1. (Rule 8.1) Definitions.

For purposes of this Article, the following definitions apply:

(a) "Commission staff of record" includes staff from the Division of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Protection and Safety Division assigned to an adjudicatory proceeding or to a ratesetting proceeding initiated by complaint, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity.

"Commission staff of record" does not include the following staff when and to the extent they are acting in an advisory capacity to the Commission with respect to a formal proceeding: (1) staff from any of the industry divisions; or (2) staff from the Consumer Protection and Safety Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.

(b) "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.

(c) "Ex parte communication" means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

(1) concerns any substantive issue in a formal proceeding,

(2) takes place between an interested person and a decisionmaker, and

(3) does not occur in a public hearing, workshop, or other public forum established in the proceeding, or on the record of the proceeding.

Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not ex parte communications.

(d) "Interested person" means any of the following:

(1) any party to the proceeding or the agents or employees of any party, including persons receiving consideration to represent any of them;

(2) any person with a financial interest, as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter at issue before the Commission, or such person's agents or employees, including persons receiving consideration to represent such a person; or

(3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission, even if that association is not a party to the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

8.2. (Rule 8.2) Ex Parte Requirements.

(a) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

(c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.3. In addition, the following restrictions apply:

(1) All-party meetings: Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) Individual oral communications: If a decisionmaker grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three days before the meeting or call.

(3) Written ex parte communications are permitted at any time provided that the interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

(4) Ratesetting Deliberative Meetings and Ex Parte Prohibitions:

(A) The Commission may prohibit ex parte communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision in the proceeding is scheduled for Commission action, during which period the Commission may hold a Ratesetting Deliberative Meeting. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the day of the Business Meeting to which the decision is held.

(B) In proceedings in which a Ratesetting Deliberative Meeting has been scheduled, ex parte communications are prohibited from the day of the Ratesetting Deliberative Meeting at which the decision in the proceeding is scheduled to be discussed through the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

(d) Notwithstanding Rule 8.4, unless otherwise directed by the assigned Administrative Law Judge with the approval of the assigned Commissioner, the provisions of subsections (b) and (c) of this rule, and any reporting requirements under Rule 8.3, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding.

(e) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 8.3.

(f) Ex parte communications regarding the assignment of a proceeding to a particular Administrative Law Judge, or reassignment of a proceeding to another Administrative Law Judge, are prohibited. For purposes of this rule, "ex parte communications" include communications between an Administrative Law Judge and other decisionmakers about a motion for reassignment of a proceeding assigned to that Administrative Law Judge.

(g) The requirements of this rule, and any reporting requirements under Rule 8.3, shall apply until (1) the date when the Commission serves the decision finally resolving any application for rehearing, or (2) where the period to apply for rehearing has expired and no application for rehearing has been filed.

(h) Upon the filing of a petition for modification, the requirements of this rule, and any reporting requirements under Rule 8.3, that applied to the proceeding in which the decision that would be modified was issued shall apply until and unless (1) no timely response, protest or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(i) Where a proceeding is remanded to the Commission by a court or where the Commission re-opens a proceeding, the requirements of this rule and any reporting requirements under Rule 8.3 that previously applied to the proceeding shall apply until and unless a Commission order or a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(j) When the Commission determines that there has been a violation of this rule or of Rule 8.3, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

(k) The Commission shall render its decision based on the evidence of record. Ex parte communications, and any notice filed pursuant to Rule 8.3, are not a part of the record of the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.2(b), 1701.3(c) and 1701.4(b), Public Utilities Code.

8.3. (Rule 8.3) Reporting Ex Parte Communications.

Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. A "Notice of Ex Parte Communication" (Notice) shall be filed with the Commission's San Francisco Docket Office within three working days of the communication. The Notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The Notice shall include the following information:

(a) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(b) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication;

(c) A description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4)(C)(i)-(iii), Public Utilities Code.

8.4. (Rule 8.4) Ex Parte Requirements Prior to Final Categorization.

(a) Applications.

(1) The ex parte requirements applicable to ratesetting proceedings shall apply from the date the application is filed through the date of the Commission's preliminary determination of category pursuant to Rule 7.1(a).

(2) The ex parte requirements applicable to the category preliminarily determined by the Commission pursuant to Rule 7.1(a) shall apply until the date of the assigned Commissioner's scoping memo finalizing the determination of categorization pursuant to Rule 7.3.

(b) Rulemakings. The ex parte requirements applicable to the category preliminarily determined by the Commission pursuant to Rule 7.1(d) shall apply until the date of the assigned Commissioner's ruling on scoping memo finalizing the determination of category pursuant to Rule 7.3.

(c) Complaints. The ex parte requirements applicable to adjudicatory proceedings shall apply until the date of service of the instructions to answer finalizing the determination of category pursuant to Rule 7.1(b).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

8.5. (Rule 8.5) Communications with Advisors.

Communications with Commissioners' personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications in ratesetting proceedings are permitted without the restrictions of Rule 8.2(c)(1) and (2).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

8.6. (Rule 8.6) Requirements in Proceedings Filed Before January 1, 1998.

The following requirements apply to proceedings filed before January 1, 1998:

(a) In any investigation or complaint where the order instituting investigation or complaint raises the alleged violation of any provision of law or Commission order or rule, ex parte communications and communications with Commissioners' personal advisors are prohibited after the proceeding has been submitted to the Commission.

(b) Ex parte communications and communications with Commissioners' personal advisors are permitted, and shall not be reported, in rulemakings and in investigations consolidated with rulemakings to the extent that the investigation raises the identical issues raised in the rulemaking.

(c) All other ex parte communications and communications with Commissioners' personal advisors are permitted, and are subject to the reporting requirements of Rule 8.3.

(d) The Commission, or the assigned Administrative Law Judge with the approval of the assigned Commissioner, may issue a ruling tailoring these requirements to the needs of any specific proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

(END OF ATTACHMENT A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated May 20, 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ
Cristine Fernandez

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 to ensure 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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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.