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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Cytel, Inc. for Registration as
an Interexchange Carrier Telephone
Corporation pursuant to the provisions of
Public Utilities Code Section 1013.

Application 12-04-002
(Filed April 4, 2012)

**ADMINISTRATIVE LAW JUDGE'S RULING SETTING A PREHEARING
CONFERENCE AND REQUIRING THE PARTIES TO MEET AND CONFER
AND TO FILE A JOINT PREHEARING CONFERENCE STATEMENT**

1. Introduction

On April 4, 2012, Cytel, Inc. (Cytel) filed an application to register under Pub. Util. Code § 1013 to provide resold interexchange service as a switchless reseller in California.

On May 9, 2012, the Consumer Protection and Safety Division (CPSD) filed a protest requesting that the Commission conduct further review of the Cytel application because CPSD alleges Cytel has violated Rule 1.1 of the Commission's Rules of Practice and Procedure¹ and because CPSD has concerns about Cytel's fitness to operate as a utility. In its application, Cytel's president, Carmen Asorey, declared under penalty of perjury that none of Cytel's officers

¹ All references to Rules are to the Commission's Rules of Practice and Procedure.

had been found liable for fraud or violation of a law regulating public utilities.² CPSD asserts that, contrary to Carmen Asorey's sworn statement, there are at least five separate incidents of investigations or sanctions related to companies in which Carmen Asorey held an officer role. CPSD asserts that failure to disclose these incidents is a violation of Rule 1.1. In addition, CPSD alleges that Cytel's president has a history of working for or with companies that have been the subject of slamming allegations and other complaints.

Cytel did not reply to CPSD's protest.

2. The Prehearing Conference

This ruling sets a PHC for July 2, 2012, at 10:00 a.m., at the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102.

A PHC is called to (1) determine the parties; (2) accept appearances and establish the permanent service list; (3) determine the positions of the parties;

² The relevant portion of the verified statement reads as follows:

"Neither applicant . . . any of its officers . . . or owners . . . or anyone acting in a management capacity for applicant: . . . (b) 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; . . .(f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of . . . any other statute, regulation or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other monetary forfeitures in resolution of any action by any regulatory body, agency or attorney general."

(4) identify issues for inclusion in the scoping memo for this proceeding;
(5) discuss the schedule for this proceeding; (6) determine if there are any challenges to either the categorization of this proceeding or to the preliminary determination that there is a need for hearings; and (7) discuss any additional procedural matters relevant to this proceeding.

3. The PHC Statement and Order to Meet and Confer

In preparation for the PHC, CPSD and Cytel shall meet and confer either in person or telephonically to discuss the following subjects:

1. Identification of the specific factual and legal issues that the Commission needs to decide in this case;
2. What material facts are undisputed;
3. Whether any discovery is needed and the anticipated date that discovery will be completed;
4. Whether hearings are needed;
5. If the parties believe that a hearing is needed, the estimated number of days required, and the number of witnesses that each side plans to present at the hearing; and
6. A proposed schedule for this case, including dates for completing discovery, filing prepared written testimony, and for hearing.

4. Ex Parte Rules

Ratesetting proceedings are subject to the *ex parte* restrictions and reporting requirements set out in Pub. Util. Code § 1701.3(c) as further explained in the Commission's Rules, Article 8 (beginning with Rule 8.1). The restrictions and reporting requirements extends to communications between any party and a decisionmaker (including all Commissioners, Commissioners' advisors and the assigned Administrative Law Judge) concerning any substantive matter having to do with the case, unless the communication occurs in a public hearing or on

the record. Accordingly, letters, e-mails, and conversations (whether by telephone or in person) that concern substantive matters, rather than purely procedural ones, are subject to the reporting requirements and restrictions.

5. Filing, Service, and Service List

Cytel and CPSD shall file their joint PHC statement that addresses the above subjects with the Commission's Docket Office, and a copy to me, by no later than June 28, 2012. Parties may submit their copy to me by e-mail addressed to jmo@cpuc.ca.gov.

Parties are encouraged to file and serve electronically, whenever possible. This proceeding will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served. This rule allows electronic service of documents, in a searchable format, unless the party or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by U.S. mail. Concurrent e-mail service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only," is required. Parties are expected to provide paper copies of served documents upon request. More information regarding electronic filing is available at <http://www.cpuc.ca.gov/puc/efiling>.

Parties are responsible for ensuring that the correct information is contained on the service list, and notifying the Commission's Process Office and other parties of corrections or ministerial changes. (See Rules of Practice and Procedure Rule 1.9(f).)

If either party has questions regarding Commission procedures, please contact the Commission Public Advisor's Office by phone at (866) 849-8390 or (415) 703-2074 or by e-mail at public.advisor@cpuc.ca.gov. The Commission's

Rules of Practice and Procedure are also available for review on our website at <http://www.cpuc.ca.gov/PUC/documents/codelawspolicies.htm>.

IT IS RULED that:

1. The Commission has set a prehearing conference in the above-captioned matter for July 2, 2012, at 10:00 a.m. at the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102.
2. Cytel, Inc. and Consumer Protection and Safety Division shall file and serve their joint prehearing conference (PHC) statement, as described above, no later than June 28, 2012. Please also serve the undersigned with the joint PHC statement by same day e-mail service at jmo@cpuc.ca.gov.
3. To the extent discovery is required, parties shall not wait for the prehearing conference to commence it.

Dated June 19, 2012, at San Francisco, California.

/s/ JEANNE M. MCKINNEY

Jeanne M. McKinney
Administrative Law Judge