

Decision **PROPOSED DECISION OF ALJ FITCH** (Mailed 2/7/2012)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of BullsEye Telecom, Inc. (U6995C) for a Certificate of Public Convenience and Necessity for Additional Authority to Operate as a Provider of Resold Local Exchange and IntraLATA Service within the Service Areas of Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications of California.

Application 11-10-013  
(Filed October 10, 2011)

**DECISION GRANTING MOTION TO WITHDRAW AND  
DISMISSING THIS PROCEEDING WITH CONDITIONS**

**1. Summary**

This decision grants the motion of BullsEye Telecom, Inc. (Applicant) to withdraw its application for a certificate of public convenience and necessity for authority to provide resold local exchange and intra-local access and transport area services in the service areas of Citizens Telecommunications Company of California, dba Frontier Communications of California and dismisses the proceeding with conditions. Applicant and/or any of its current officers, directors or owners of more than ten percent of its outstanding shares shall reference this decision, the application, the protest of the Commission's Consumer Protection and Safety Division, and its prior Application 11-07-019 in

any application that they, together or separately, shall make to the Commission for authorization to provide telecommunications services in California.

## **2. The Applicant**

BullsEye Telecom, Inc., (BullsEye Telecom or Applicant) is a privately held Michigan corporation. Applicant's principal place of business is located at 25925 Telegraph Road, Suite 210, Southfield, MI 48033. The Applicant's phone number is (248) 784-2500. BullsEye Telecom possesses a Certificate of Public Convenience and Necessity (CPCN) from the Commission to operate in the territories of Pacific Bell Telephone Company, doing business as AT&T California (AT&T) and Verizon California, Inc. (Verizon), under U6695C.

## **3. Factual and Procedural Background**

On October 10, 2011, BullsEye Telecom filed an application for a CPCN to provide resold competitive local exchange carrier services to business customers in all the service territories of Citizens Telecommunications Company of California dba Frontier Communications of California. The services would consist of local exchange service, calling features, and optional local exchange services.

In an attachment to its application titled "Verification," BullsEye Telecom stated that "neither applicant, any affiliate, officer, director, partner nor owner of more than 10% of applicant, or any person acting in such a capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule or order."

Also in the "Verification" attachment to its application, BullsEye Telecom stated that "no affiliate, officer, director, partner or person owning more than 10% of applicant, or anyone acting in such a capacity whether or not formally

appointed, held one of these positions with a telecom carrier has been found criminally or civilly liable by a court of appropriate jurisdiction for a violation of Section 17000 et seq. of the California Business and Professions Code, or for any actions which involve misrepresentation to consumers, and to the best of Applicant's knowledge, is not currently under investigation for similar violations."

### **3.1. Protest Filed by CPSD**

On November 14, 2011, pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure (Rules),<sup>1</sup> the Commission's Consumer Protection and Safety Division (CPSD) filed a protest to BullsEye Telecom's CPCN application. CPSD asserted that the Applicant violated Rule 1.1 because its certifications referenced above in the attachment to its application are false. CPSD asserts that the Applicant failed to report FCC violations and sanctions as well as enforcement actions taken by other states.

CPSD ~~claims~~cites to ~~have found eleven~~<sup>2</sup>fourteen FCC slamming violations (Applicant changed a consumer's telecommunication service provider without obtaining authorization and verification from subscriber) relating to the Applicant, dated between June 22, 2004 and December 2, 2010.<sup>32</sup> CPSD also asserts that the Washington Utilities and Transportation Commission revoked

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<sup>1</sup> All references to Rules are to the Commission's Rules of Practice and Procedure, which is available on the Commission's website at: [http://docs.cpuc.ca.gov/word\\_pdf/RULES\\_PRAC/70731.pdf](http://docs.cpuc.ca.gov/word_pdf/RULES_PRAC/70731.pdf).

<sup>2</sup> ~~CPSD's protest actually specifies fourteen violations, but only offers citations for eleven FCC violations.~~

<sup>32</sup> Protest of CPSD to Application of BullsEye Telecom at 3.

BullsEye Telecom's registration for failing to comply with regulatory requirements.<sup>43</sup> In addition, CPSD asserts that in February 2007, the Nebraska Public Service Commission amended a fine against BullsEye Telecom for late report filing.<sup>54</sup>

CPSD states it also found evidence that one of BullsEye Telecom's officers also held officer positions with three telecommunications carriers, Midcom Communications, Inc., PacNet, Inc., and Cel-Tech International Corp., all of which filed for bankruptcy in 1997.<sup>65</sup>

Finally, CPSD points out that BullsEye Telecom filed a nearly identical application to this one with the Commission on July 7, 2011, Application (A.) 11-07-019, except that additional information was included in this application as Exhibit G, related to formal complaints and sanctions.

### **3.2. Motion of BullsEye Telecom to Withdraw Application**

On December 2, 2011, in lieu of a reply to the protest of the CPSD, BullsEye Telecom filed a motion for leave to withdraw the application for a CPCN. BullsEye Telecom states that it has determined that its business case no longer supports pursuing this application.<sup>76</sup>

With regard to the FCC cases, BullsEye Telecom stated that these are informal or pending complaints and that the Commission has previously ruled

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<sup>43</sup> *Id.*

<sup>54</sup> *Id.* at 4.

<sup>65</sup> *Id.* at 4. According to CPSD, all three companies filed for bankruptcy on November 7, 1997 in the United States District Court, Eastern District of Michigan, case numbers: 9759044, 9759052, and 9759057, respectively.

<sup>76</sup> Motion for Leave to Withdraw Application for CPCN of BullsEye Telecom, at 1.

that omitting reference to these types of complaints is not a violation of Rule 1.1 (citing Decision (D.) 09-07-034).<sup>87</sup> In addition, as to the bankruptcy filings, BullsEye Telecom states that it simply missed these instances in its own research on its officers.<sup>98</sup>

BullsEye Telecom did not specifically respond to the cases raised by CPSD from other states. However, in general, BullsEye Telecom does not admit to any intent to withhold information or provide false statements to the Commission. BullsEye Telecom maintains that CPSD's protest is without merit.<sup>109</sup>

### **3.3. Response of CPSD to the Motion for Withdrawal**

On December 20, 2011, CPSD filed a response to BullsEye Telecom's motion to withdraw its application, along with a motion for acceptance of the late-filed response, which was one day late. In general, CPSD's response reiterates the allegations in its Protest of Rule 1.1 violations in the current application by BullsEye Telecom, for failure to disclose bankruptcies of prior companies of one of its officers, as well as failure to disclose FCC complaints.

For these two violations, CPSD requests that the Commission fine BullsEye Telecom a total of \$10,000. CPSD cites the Commission's authority in Public Utilities Code Sections 2107 and 2108, and the criteria laid out in D.98-12-075. CPSD states that this level of fine is warranted based on the following factors: severity of the violations committed by BullsEye Telecom, its action to prevent

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<sup>87</sup> *Id.* at 2.

<sup>98</sup> *Id.*

<sup>109</sup> *Id.*

detect, disclose and remedy the violations, the need for deterrence, its financial information, degree of wrongdoing, and previous Commission actions.

### **3.4. Reply of BullsEye Telecom to CPSD Response to the Motion for Withdrawal**

BullsEye Telecom was granted permission to file a reply to CPSD's response to its motion to withdraw the application. The reply was filed on January 10, 2012. BullsEye Telecom opposes CPSD's request for a fine, and generally reiterates the comments in its motion to withdraw the application. BullsEye Telecom also again cites D.09-07-034 which clarifies that omission of informal or pending complaints where sanctions are not issued is not a violation of Rule 1.1.

In addition, BullsEye Telecom emphasizes that the bankruptcy history of one of its officers was prior to the CPCN granted by the Commission to BullsEye Telecom to operate in the territories of AT&T and Verizon, and that BullsEye Telecom has been continuously operating in California since its original CPCN was granted in D.02-08-031.

Finally, BullsEye Telecom states that it provides local and long distance service in forty eight states, is in good standing in all states, and enjoys the highest rating granted by the Better Business Bureau.

## **4. Discussion**

We grant Applicant's ~~Motion~~motion to withdraw its application. However, based on the circumstances of this case and to ensure a complete record and encourage efficient use of Commission resources in the future, we dismiss this case with the following conditions: The Applicant and/or any of its current officers, directors or owners of more than ten percent of its outstanding shares, shall reference this decision, the application, the CPSD protest, and the prior application (A.11-07-019) in any future applications that they, together or

separately, shall make to the Commission for authorization to provide telecommunications services in California.

Further, we decline to adopt CPSD's recommendation to fine BullsEye Telecom \$10,000 for Rule 1.1 violations. We do remind BullsEye Telecom that we do take our regulatory requirements very seriously, however. Should BullsEye Telecom fail to disclose information as required in the future, we will not hesitate to escalate to fines, if the situation warrants. We also point out that high ratings from the Better Business Bureau are not a substitute for complying with all of our regulatory requirements.

However, in this situation, no consumers were harmed as a result of BullsEye Telecom's failure to disclose the information CPSD pointed out. All of the FCC proceedings cited by CPSD consist of informal complaints, which did not result in any sanctions against BullsEye Telecom. Thus, consistent with D.09-07-034, the failure to disclose these complaints is not a Rule 1.1 violation.

Failure to disclose the bankruptcy of prior companies of one of BullsEye Telecom's officers causes more concern. The officer is a high level one, and BullsEye Telecom has a duty to keep track of this type of history for purposes of its requests before the Commission. However, there is no litmus test that prohibits issuing a CPCN to anyone with a prior bankruptcy, as evidenced by BullsEye Telecom's existing CPCN granted in 2002, after the bankruptcies in question. In addition, the conditions we impose on the company as a result of the withdrawal of this application for any subsequent CPCN filings will ensure that there is full disclosure and explanation of any future such circumstances, should BullsEye Telecom request further authority in the future.

## **5. Request to File Under Seal**

Pursuant to Rule 11.4, Applicant has filed a motion for leave to file its Financial Statements and Independent Auditor's Report, as part of the application, as confidential material under seal. Applicant represents that the information is confidential and proprietary, and disclosure could compromise its competitive and financial positions to the detriment of the public. We have granted similar requests in the past, and do so here. The information shall be kept under seal for a period of two years.

## **6. Categorization and Need for Hearing**

In Resolution ALJ 176-3283, dated October 20, 2011, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. CPSD has protested the application and the Applicant has requested that the application be withdrawn. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

## **7. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (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 ~~\_\_\_\_\_~~ February 27, 2012, by CPSD, and reply comments were filed on ~~\_\_\_\_\_~~ by \_\_\_\_\_ March 2, 2012 by BullsEye Telecom.

CPSD's comments generally request that the Commission adopt CPSD's original recommendation to fine BullsEye Telecom \$10,000 for violations of Rule 1.1. All of CPSD's arguments, however, are aimed at the underlying issue of ensuring disclosure either of FCC complaints or the company's bankruptcy

history. By conditioning the withdrawal of BullsEye Telecom's application as we have in this decision, disclosure of these issues will be required of the Applicant in the future. The decision not to fine BullsEye Telecom does not mean that the Commission does not place emphasis on full disclosure, as required by our rules.

CPSD's primary arguments for fining the applicant were already presented in this case and addressed in the proposed decision. We decline to entertain new arguments for the CPSD-preferred outcome of a \$10,000 fine in comments on the proposed decision. We therefore decline to modify the decision with regard to a fine.

CPSD also requests that we modify a footnote in the proposed decision related to the number of FCC complaints cited in CPSD's original protest to the application. This correction has been made in the text of this decision.

In its reply comments, BullsEye Telecom generally requests that the Commission dismiss CPSD's comments and new arguments and leave the proposed decision as written. As summarized above, except for the footnote and text correction, we do not modify the overall outcome of this decision and decline to impose a fine on BullsEye Telecom.

## **8. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Julie A. Fitch is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on October 14, 2011.
2. CPSD filed a protest on November 14, 2011.
3. CPSD's protest alleged that the Applicant violated Rule 1.1 because its certifications in the application are false.

4. CPSD's protest alleged that the Applicant failed to report FCC violations and sanctions as well as enforcement actions taken and/or fines imposed by several other states.

5. CPSD alleged it found bankruptcies of three former companies of an officer of BullsEye Telecom.

6. The FCC cases cited by CPSD are all informal complaints and did not result in sanctions against the Applicant.

7. The bankruptcies of the former companies of a BullsEye Telecom officer occurred prior to the Commission granting a CPCN to BullsEye Telecom in 2002; however, that fact does not remove applicant's obligation of disclosure.

8. On December 2, 2011, Applicant filed a Motion for Leave to Withdraw the Application in lieu of a response to CPSD's protest.

9. On December 20, 2011, CPSD filed a motion for leave to file a late response to Applicant's Motion for Leave to Withdraw the Application.

10. On January 10, 2012, Applicant filed a reply to CPSD's December 20, 2011 Response to its Motion for Leave to Withdraw the Application.

11. Applicant has filed a motion for leave to file confidential financial information under seal.

### **Conclusions of Law**

1. Applicant's Motion to Withdraw should be granted.
2. The application should be dismissed with conditions.
3. The ~~applicant~~Applicant and/or any of its current officers, directors or owners of more than ten percent of its outstanding shares should be required to reference this decision, the application, the CPSD protest, and the prior application (A.11-09-017) in any future applications that they, together or

separately, shall make to the Commission for authorization to provide telecommunications services in California.

4. Applicant's motion to file material under seal should be granted. Material under seal should not be made accessible or disclosed to anyone other than the Commission and its staff for two years, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge.

5. CPSD's motion to file a late response to the Applicant's Motion for Leave to Withdraw the Application should be granted.

6. Applicant's request to file a reply to CPSD's Response to its Motion for Leave to Withdraw should be granted.

7. CPSD's request to fine BullsEye Telecom for Rule 1.1 violations should be denied.

## **O R D E R**

**IT IS ORDERED** that:

1. BullsEye Telecom, Inc.'s Motion to Withdraw is granted with conditions.
2. BullsEye Telecom, Inc. and/or any of its current officers, directors or owners of more than ten percent of its outstanding shares are required to reference this decision, the application, and the Consumer Protection and Safety Division Protest, and its prior Application 11-07-019 in any future applications that they, together or separately, shall make to the Commission for authorization to provide telecommunications services in California.
3. BullsEye Telecom, Inc.'s request to file materials under seal is granted. Materials under seal shall not be made accessible or disclosed to anyone other than the Commission and its staff for two years, except upon further order or

ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

4. The Consumer Protection and Safety Division's motion to file a late response to the BullsEye Telecom, Inc.'s Motion for Leave to Withdraw the Application is granted.

5. BullsEye Telecom, Inc.'s request to file a Reply to the Consumer Protection and Safety Division's Response to its Motion for Leave to Withdraw the Application is granted.

6. Application 11-10-013 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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