

Decision 08-04-021 April 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Legacy Long Distance International, Inc. (U-5786-C) for a Certificate of Public Convenience and Necessity to Operate as a Provider of Facilities-Based Local Exchange Telecommunications Service within the State of California.

Application 06-11-003
(Filed November 3, 2006)

OPINION DISMISSING PROCEEDING

Summary

On January 28, 2008, Legacy Long Distance International, Inc. (Legacy) filed a Request for Leave to Withdraw Application. The Consumer Protection and Safety Division (CPSD) does not oppose the request; however, CPSD opposes Legacy's request to withdraw its application "without prejudice." CPSD requests that in all future applications Legacy be required to disclose these proceedings.

We grant Legacy's request to withdraw its application for a Certificate of Public Convenience and Necessity (CPCN) to operate as a facilities-based competitive local exchange telecommunications services provider in California.¹

¹ By Decision (D.) 06-06-017, Legacy was authorized a CPCN to provide resold competitive local exchange services, and by D.97-06-055, Legacy was registered as an interexchange carrier in California pursuant to Pub. Util. Code § 1013. Legacy provides operator and long distance services to coin-operated pay phone companies and to

Footnote continued on next page

However, in view of the allegations in this case, Legacy and/or any of its officers, directors, or owners of more than 10% of outstanding shares shall reference CPSD's protest and this decision in any future application for authorization to provide telecommunications services in California. Application 06-11-003 is closed.

Procedural Summary

Legacy filed its Application on November 3, 2006. CPSD filed a Protest of the Application on December 14, 2006. CPSD served its testimony in the form of an Investigation Report on August 13, 2007. On November 7, 2007, Legacy served its testimony in response to CPSD's report. Hearings were originally scheduled in December 2007 but, because of an illness, Legacy requested an extension of time. The extension request was granted by the assigned Administrative Law Judge (ALJ). Prior to hearings being rescheduled, Legacy filed a Request for Leave to Withdraw Application.

Positions of the Parties

Legacy requests leave to withdraw its application without prejudice to its filing an application in the future seeking a CPCN to operate as a provider of facilities-based local exchange service. Legacy states it is seeking to withdraw its application because it no longer has a current interest in obtaining authority to provide service as a facilities-based competitive local carrier in California.

CPSD alleges that it has uncovered substantial evidence that Legacy committed violations of the Commission's Rules and the Public Utilities Code, as presented in its Investigation Report. CPSD contends that Legacy's decision to

hotels and motels. For 2006, Legacy reported total annual revenues in California of \$1,069,470 and total refunds to California customers of \$36,060.

withdraw its application was based, at least in part, on the evidence discovered by CPSD. Therefore, CPSD requests that the Commission require Legacy or any of its current directors, officers or owners of more than 10% of outstanding shares to reference this application, CPSD's protest and the ruling granting withdrawal in any future applications for authorization to provide telecommunications services in this state.

Specifically, CPSD opposes Legacy's request for leave to withdraw "without prejudice." According to CPSD, the term "without prejudice" is not defined in the Commission's Rules; however, in this context it appears to denote the dismissal of this application with permission to re-file the same application in the future without any adverse impacts. CPSD believes it would be a mistake to allow Legacy to re-file this same application in the future without any reference to these proceedings. CPSD relies on D.07-10-023 *In the Matter of Application of Cordia Communications Corp.*

Discussion

As stated above, hearings were not held in this matter. However, given the nature of the pending allegations, we conclude that it is reasonable to require Legacy or any of its current directors, officers or owners of more than 10% of outstanding shares to reference this proceeding in any future application for authorization to provide telecommunications services in this state.

According to CPSD's report, Legacy has shown a pattern of regulatory noncompliance in its relationship with this Commission and other states' agencies. CPSD states that Legacy has been investigated, fined, penalized, and had its tariff and registration cancelled or its corporate certificate of authority revoked in 16 states.

We do not take such allegations lightly. We remind Legacy that Pub. Util. Code § 1013(g) authorizes cancellation or revocation of a prior registration or CPCN where the telephone utility fails to provide required information, conducts any illegal telephone operation, violates any of the applicable provisions of the Public Utilities Code or of any regulation, order, decision, rule, regulation, direction, demand or requirement issues thereunder, where the “corporation files a false statement to the commission,” or where the corporation knowingly defrauds a customer. We place Legacy on notice that we will examine CPSD’s allegations of Legacy’s pattern of regulatory noncompliance in any future application for authorization to provide telecommunications in California, and require Legacy or any of its current directors, officers or owners of more than 10% of outstanding shares who make such application to reference this proceeding in order to facilitate that examination.

Comments on Proposed 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. No comments were received.

Categorization and Need for Hearing

In Resolution ALJ 176-3183, dated November 30, 2006, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were not necessary. Applicant has requested dismissal of this application. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Bertram D. Patrick is the assigned ALJ in this proceeding.

Findings of Fact

1. Legacy filed this application seeking a CPCN to operate as a facilities-based competitive local exchange telecommunications service provider in California.

2. CPSD filed a protest to the application alleging that in this case CPSD has uncovered substantial evidence that Legacy committed violations of the Commission's Rules and the Public Utilities Code, as presented in its Investigation Report.

3. CPSD served testimony setting forth its allegations and Legacy served testimony in response. However, an evidentiary hearing was not held in this matter.

Conclusions of Law

1. Application 06-11-003 should be dismissed.

2. Based on the allegations in this case, it is appropriate to require Legacy or any of its current directors, officers or owners of more than 10% of outstanding shares to reference CPSD's protest and this decision in any future applications for authorization to provide telecommunications services in California.

O R D E R

IT IS ORDERED that:

1. Application 06-11-003 is dismissed.

2. Legacy Long Distance International, Inc., its officers, directors, and owners of more than 10% of outstanding shares, shall reference the protest of the Commission Consumer Protection and Safety Division, and this decision in any

future application for authorization to provide telecommunications services in California.

3. Application 06-11-003 is closed.

This order is effective today.

Dated April 10, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners