

I.16-01-012 - Settlement Agreement



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APPENDIX A

SETTLEMENT AGREEMENT

In order to avoid the costs and risks of further litigation and to expeditiously resolve this matter, the Consumer Protection and Enforcement Division¹ of the California Public Utilities Commission (“CPED”), and T C Telephone, LLC (“T C Telephone” or the “Applicant”) and its predecessors, successors, affiliates, and assigns, hereby agree upon the following terms for the settlement of the Commission’s Order Instituting Investigation (I.) 16-01-012, the Commission investigation to determine whether T C Telephone violated the laws, rules, and regulations governing the manner in which California consumers are switched from one carrier to another and billed for telephone services.

I. JOINT FACTUAL STATEMENT

1. The following joint factual statement is taken from the Commission’s OII and Order to Show Cause, T C Telephone’s Response to the Order to Show Cause, and the Consumer Protection and Enforcement Division’s Opening Testimony submitted on May 13, 2016. T C Telephone LLC is a telephone company based in California with its principal place of business located at 243 Washington Street, Red Bluff, California, 96080.

2. T C Telephone obtained a Certificate of Public Convenience and Necessity (CPCN) to operate as a local exchange and interexchange carrier (U-6785-C), and in April 2011 obtained a wireless reseller registration license to operate as a commercial mobile radio service provider

¹ SED Staff’s Opening Testimony in I.16-01-012 was submitted by the Commission’s Utility Enforcement Branch (UEB), which was part of the Commission’s Safety and Enforcement Division. As of June 1, 2016, UEB has been combined with other branches to form the Commission’s new Consumer Protection and Enforcement Division. Herein, this document refers to CPED as SED’s successor division.

(U-4410-C). T C Telephone offers residential, LifeLine, business, and cellular phone service. T C Telephone serves both residential and business telephone customers using the dba "Horizon Cellular."

3. On July 8, 2004, the Commission granted T C Telephone a CPCN (U-6875-C) to provide limited facilities-based and resold local exchange services as a Competitive Local Exchange Carrier (CLEC), and limited facilities-based and resold, long distance (interexchange) services as a non-dominant interexchange carrier (NDIEC). T C Telephone was designated as a wireline "Eligible Telecommunications Carrier" (ETC) on October 29, 2009,² and currently offers California LifeLine wireline services under CLEC Utility Identification Number U-6875-C.

4. On April 15, 2011, the Commission approved a wireless registration (WIR) application by T C Telephone and assigned corporate ID number U-4410-C to T C Telephone to provide resold wireless services as a commercial mobile radio service provider (CMRS, or wireless carrier). On September 10, 2014, T C Telephone dba Horizon Cellular filed Advice Letter (AL) #32, seeking authority to offer California LifeLine wireless services under U-4410-C, consistent with D.14-01-036. This application was withdrawn on March 15, 2016, during the pendency of the instant proceeding. TC Telephone was forced to withdraw by the California Lifeline staff due to the fact such staff was going to recommend denial of the application due to this proceeding. T C Telephone intends to resubmit a new Advice Letter (AL)

² Commission Resolution T-17231, October 29, 2009.

seeking authority to offer California LifeLine wireless service to the Commission's Communications Division following the execution of this Settlement Agreement.

5. The Commission's Consumer Affairs Branch (CAB) received complaints regarding Horizon Cellular in 2013. Among the complaints was a contact from an employee of the St. Francis Manor Apartments, a residence for senior citizens located in Sacramento, California, who called the CAB Fraud Hotline to complain that some of its senior residents were receiving sales pitches from a company called Horizon, offering free phone service. On January 1, 2013, T C Telephone notified its customers that it would begin providing service under the name Horizon Cellular. T C Telephone did not notify the Commission of its dba name at the time it began marketing under Horizon Cellular in 2013. When CAB began to receive consumer complaints about a company named Horizon Cellular in 2013, CAB was unable to initially identify Horizon Cellular as T C Telephone because the Commission's database did not have the proper information. According to G.O. 96-B, Telecommunications Industry Rule 9 – Notification of DBAs, a utility that does business under a name other than the name under which it was granted operating authority by the Commission must list, as part of its preliminary statement, each name under which the Utility does business. The Commission's CD notified T C Telephone to comply with the notification requirement. In response to CD's request, T C Telephone in November 2013 filed AIs #28 and #29 for its landline and wireless telephone services, respectively, to list its dba name Horizon Cellular with the Commission.

6. In 2014, T C Telephone was unable to provide CPED staff with Third Party Verification Tapes (TPVs) for twelve (12) consumers who complained to the Commission's CAB that their phone services were switched without their consent. CPED staff issued

slamming citations totaling \$12,000 for violations of PU Code Section 2889.5(a)(3), which T C Telephone paid.

7. In 2016, the Commission issued I.16-01-012, alleging that T C Telephone had failed to obtain TPVs for acquired customers in 2013 and had failed to notify the Commission of its dba name Horizon Cellular. Public Utilities Code Section 2889.5(a)(2) requires a telephone corporation to obtain confirmation of the subscriber's decision to change service providers by an independent Third Party Verification (TPV) company, and Section 2889.5(a)(3)(C) requires that the independent TPV company shall record that verification.

8. T C Telephone alleges that it did not begin utilizing the dba name Horizon Cellular until June 2013. T C Telephone also alleges that the majority of the newly added customers in 2013 were as a result of incoming sales calls, not outbound, and therefore that the TPV requirement does not apply to said customers. Section 2889.5(a)(3)(D) provides, "a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers." T C Telephone states that it has cooperated with CPED staff's data requests and has taken action to correct violations and remedy wrongs with respect to affected customers and to ensure ongoing compliance.

II. AGREEMENT

9. Acknowledgements. T C Telephone acknowledges that G.O. 96-B requires telephone companies to notify the Commission of other names under which the telephone company does business, and that T C Telephone failed to do so. T C Telephone further acknowledges that Public Utilities Code Section 2889.5(a)(2) requires a telephone corporation to

obtain confirmation of the subscriber's decision to change service providers by an independent Third Party Verification (TPV) company, and Section 2889.5(a)(3)(C) requires that the independent TPV company shall record that verification, and that in certain instances T C Telephone alleges that one particular independent marketing company that performed services for TC Telephone failed to do so or failed to retain such recordings. Subject to T C Telephone's ongoing compliance with this Agreement and all applicable laws, and Commission rules, regulations, decisions, and orders, T C Telephone and CPED acknowledge that all issues raised in I.16-01-012 will have been fully resolved, and that CPED does not oppose the Commission's granting of T C Telephone dba Horizon Cellular's Advice Letter under U-4410-C seeking authority to offer California LifeLine wireless services, when it is re-filed.

7. Penalty Payments. In order to resolve the legal issues raised by the OII, T C Telephone will pay a \$200,000 penalty to the State of California General Fund. T C Telephone will pay \$8,333.33 within five (5) days after the calendar date of the Commission's approval of this Agreement. T C Telephone will pay the remaining \$191,666.67 penalty in twenty-three (23) equal monthly installments beginning thirty (30) days after the first payment of \$8,333.33 is made. All penalty payments shall be made payable to the California Public Utilities Commission and remitted to the Commission's Fiscal Office, 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The check or money order shall indicate the decision number of the Commission decision number incorporating this settlement.

III. GENERAL PROVISIONS

8. Scope and Effect of Agreement. This Agreement represents a full and final resolution of I.16-01-012, and the matters giving rise thereto. The parties understand that this Agreement is subject to approval by the Commission. As soon as practicable after the Parties

have signed the Agreement, a Motion for Commission Approval and Adoption of the Agreement will be filed. The Parties agree to support the Agreement, recommend that the Commission approve it in its entirety without change and use their best efforts to secure Commission approval of it in its entirety without modification. The Parties agree that, if the Commission fails to adopt the Agreement in its entirety without material change and issue the requested operating authority, the Parties shall convene a settlement conference within fifteen (15) days thereof to discuss whether they can resolve any issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's actions, the Agreement shall be rescinded and the Parties shall be released from their obligation to support this Agreement. Thereafter, the Parties may pursue any action they deem appropriate, but agree to cooperate to establish a procedural schedule for the remainder of the proceeding and agree that neither this Agreement nor its terms shall be admissible in such proceeding unless the Parties agree.

9. Successors. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.

10. Knowing and Voluntary Execution. The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties and privileges created hereunder, and that each enters this Agreement freely and voluntarily.

11. Authority to Execute Agreement. The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency or employment.

12. Entire Agreement. The Parties expressly acknowledge that the consideration recited in this Agreement is the sole and only consideration of this Agreement, and that no representations, promises, or inducements have been made by the Parties or any director, officer, employee, or agent thereof other than as set forth expressly in this Agreement.

13. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

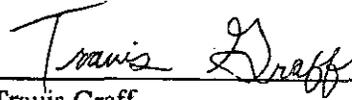
14. Execution in Counterparts. This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement. A signature transmitted by facsimile shall be regarded as an original signature.

15. Interpretation of the Agreement. The Parties have bargained in good faith to reach the agreement set forth herein. The Parties intend the Agreement to be interpreted as a unified, interrelated agreement. Both of the Parties have contributed to the preparation of this Agreement. Accordingly, the Parties agree that no provision of this Agreement shall be construed against either of them because a particular Party or its counsel drafted the provision.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

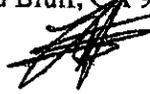
T C TELEPHONE LLC

Dated: 6-24-2016



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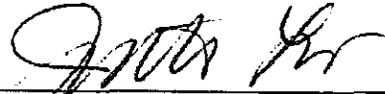
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**CONSUMER PROTECTION AND
ENFORCEMENT DIVISION**

Dated: 6-23-2016



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