



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Investigation on the Commission's own motion into the operations, practices, and conduct of T C Telephone LLC, doing business as Horizon Cellular, (T C Telephone) (U6875C) and (U4410C), 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.

Investigation 16-01-012
(Filed January 28, 2016)

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

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I. INTRODUCTION

Pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure, the Consumer Protection and Enforcement Division¹ (CPED) and T C Telephone LLC (T C Telephone) (collectively, the "Parties") respectfully request that the Commission approve and adopt the proposed attached Settlement Agreement, which resolves all of the issues in the Commission's Order Instituting Investigation (OII) 16-01-012. The Parties believe the proposed settlement is in the public interest, reasonable in light of the record, and consistent with the law. The Parties urge the Commission to approve the Settlement Agreement without modification, a copy of which is attached as Appendix A.

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.

II. PROCEDURAL AND FACTUAL BACKGROUND

The Parties have jointly agreed to an undisputed set of facts that form the basis of this agreement and upon which the Commission can base its review of the reasonableness of this Agreement, which are recited in the Settlement Agreement, as follows:

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.

T C Telephone obtained a Certificate of Public Convenience and Necessity (CPCN) to operate as a local exchange and interexchange carrier (U6785C), and in April 2011 obtained a wireless reseller registration license to operate as a commercial mobile radio service provider (U4410C). 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."

On July 8, 2004, the Commission granted T C Telephone a CPCN (U6875C) 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, and currently offers California LifeLine wireline services under CLEC Utility Identification Number U6875C.

On April 15, 2011, the Commission approved a wireless registration (WIR) application by T C Telephone and assigned corporate ID number U4410C 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 U4410C, 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 AL to the Commission's Communications

Division, seeking authority to offer California LifeLine wireless service following the execution of this Settlement Agreement.

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 General Order 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 ALs #28 and #29 for its landline and wireless telephone services, respectively, to list its dba name Horizon Cellular with the Commission.

In 2014, T C Telephone was unable to provide CPED staff with Third Party Verification Tapes (TPVs) for 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 Public Utilities (Pub. Util.) Code Section 2889.5(a)(3), which T C Telephone paid.

In 2016, the Commission issued I.16-01-012, alleging that T C Telephone failed to obtain TPVs for its newly acquired customers and failed to notify the Commission of its

dba name Horizon Cellular. Pub. Util. 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. CPED staff alleged that T C Telephone did not use any independent TPV company since it began operations in 2004.

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 ensure ongoing compliance.

III. THE PROPOSED SETTLEMENT AGREEMENT

A. Joint Statement of the Case

After settlement discussions, the Parties agreed to a joint factual statement of the case as the factual basis on which to base a resolution of this case. Importantly, the Respondents acknowledge the applicability of the law and the seriousness of the concerns raised by the CPED. The joint factual statement of the case is set forth in the proposed attached Settlement Agreement, and set forth above.

B. Acknowledgement

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 U4410C, seeking authority to offer California LifeLine wireless services, when it is re-filed.

C. Payment

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.

**IV. THE PROPOSED SETTLEMENT IS REASONABLE
IN LIGHT OF THE RECORD, CONSISTENT WITH THE LAW
AND PRECEDENT, AND IN THE PUBLIC INTEREST**

Pursuant to Rule 12.1(d) of the Commission's Rules of Practice and Procedure, settlements must be reasonable in light of the record, consistent with the law, and in the public interest. The Parties believe that the proposed settlement in this matter satisfies each of those criteria, and therefore recommend that the Commission approve and adopt the proposed settlement.

**A. The Proposed Settlement Is Reasonable In Light Of the
Record**

CPED has engaged in discovery, including written data requests to T C Telephone, and believes that there is a sufficient factual record in this case. Based on the discovery

obtained by CPED and voluntary disclosures made by T C Telephone, the Parties have agreed to an undisputed set of facts upon which the Commission can form the official record, which is set forth in the Settlement Agreement. The Parties believe that the Settlement Agreement addresses the issue of operating without authority and failure to obtain TPVs in a reasonable manner in light of the record.

B. The Proposed Settlement Is Consistent With The Law And Precedent

Nothing in the Settlement Agreement contravenes any statute, Commission decision, or rule. T C Telephone acknowledges that Public Utilities Code Section 2889.5 applies to it, as well as Commission General Order 96-B, and that T C Telephone did not always maintain a proper dba name on file with the Commission and did not always obtain TPVs in compliance with Section 2889.5. T C Telephone commits to full compliance with those provisions. T C Telephone further agrees to make payments totaling \$200,000 to the State's General Fund as a result of said acknowledgements. Therefore, the Settlement Agreement is consistent with and enforces applicable law.

C. The Proposed Settlement Is In The Public Interest

The Settlement Agreement is consistent with the Commission's well-established policy of supporting the resolution of disputed matters through settlement, reflects a reasonable compromise between the Settling Parties' positions, and will avoid the time, expense and uncertainty of evidentiary hearings and further litigation. Accordingly, the Settlement Agreement is in the public interest and should be adopted by the Commission without material change.

V. CONCLUSION

For the reasons stated above, the Parties believe the proposed Settlement Agreement resolves all of the issues set forth in the OII, and that the proposed Settlement Agreement is reasonable in the light of the record, consistent with the law and precedent, and in the public interest. Therefore, the Parties jointly request that the Commission adopt the proposed Settlement Agreement in the form attached as Appendix A.

Respectfully submitted,

/s/ TRAVIS T. FOSS

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