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TO PARTIES OF RECORD IN APPLICATION 14-01-029:

This is the proposed decision of Administrative Law Judge Dan H. Burcham. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 1, 2016 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ RICHARD SMITH for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:ek4
Attachment

Decision: PROPOSED DECISION OF ALJ BURCHAM (Mailed 10/18/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ILATANET, LLC for Authorization to obtain
a Certificate of Public Convenience and
Necessity as a Telephone Corporation
Pursuant to the Provisions of Public Utilities
Code Section 1001.

Application 14-01-029
(Filed January 31, 2014)

**DECISION DENYING ILATANET, LLC A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY, ORDERING FINE OF \$228,000, AND
REQUIRING THEM TO CEASE OPERATION IN CALIFORNIA**

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**DECISION DENYING ILATANET, LLC A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY, ORDERING FINE OF \$228,000, AND
REQUIRING THEM TO CEASE OPERATION IN CALIFORNIA**

Summary

This decision denies Ilatanet, LLC's, application for a certificate of public convenience and necessity to provide resold interexchange service in California under Public Utilities Code § 1001. The Commission finds that Ilatanet has not demonstrated that it is fit to operate and provide its proposed services in California due to operating without authority and a long, adverse regulatory history with this Commission, other state agencies and commissions, and the Federal Communications Commission.

The Commission considered both aggravating and mitigating circumstances and finds that the minimum fine prescribed in Public Utilities Code § 2107 of \$500 for each day of operating without authority should be applied. The Commission also determines that for the purposes of assessing a fine, the number of days of Ilatanet's unauthorized operation should begin on the date the Commission revoked the operating authority of Ilatanet's predecessor in interest, Devine Communications, Inc., and be tolled from the date Ilatanet filed its application for operating authority on January 31, 2014. As a result, this decision imposes a fine of \$228,000 against Ilatanet for 456 days of operating without authority from November 1, 2012¹ to January 30, 2014, and orders it to cease operation in California.

¹ Ilatanet's application stated it began offering services in California on November 1, 2012, though its website (which appears to have been taken down as of the date of this decision) formerly advertised that it had been providing calling services, apparently in California, for 12 years as of the filing of the application.

1. Background

On January 31, 2014, Ilatanet, LLC (Ilatanet or applicant), a Nevada limited liability company authorized to do business in California, filed an application for a certificate of public convenience and necessity (CPCN) to provide resold interexchange services in California. The application appeared in the Commission's Daily Calendar on February 12, 2014. The application, filed by Ilatanet's former counsel, initially said this service would be provided using prepaid calling cards.

On April 19, 2012, pursuant to Resolution T-19539, the Commission revoked the operating authority of Devine Communications (U-7053), Ilatanet's predecessor in interest, for failure to post a bond and pay user fees. Devine Communications had been providing services similar or identical to those provided by Ilatanet for many years. A recent internet search² revealed that Devine Care, Inc., based in San Francisco, California, is operating a service identified as "My Tawag Na Direct" (TND), using the website www.mytawagnadirect.com. Devine Communications, Inc., also based in San Francisco, is operating "Tawag Na Direct", using the website www.tndfreecalls.com. Both services are advertised as a "pre-paid calling service plan" focused on calls to the Philippines."³ Devine Care, Inc., and Devine Communications, Inc., are operated by Ilatanet's principal, Douglas Devine.

² Google and Facebook searches September 15, 2016 for the term "mytawagnadirect".

³ https://www.facebook.com/My-Tawag-na-Direct-202514115518/info?tab=page_info

On March 14, 2014, the Commission's Safety and Enforcement Division⁴ filed a timely protest to the application, questioning Ilatanet's fitness to operate because it admitted to operating without authority and failed to disclose past administrative sanctions imposed against Ilatanet's principal, Douglas Devine. Ilatanet's former counsel filed a response to CPED's protest on April 1, 2014. In its response, Ilatanet confirmed the admission that Ilatanet "provided debit/prepaid phone card services in California without authority, in violation of Public Utilities Code §§ 885 – 886⁵. Applicant acknowledged its unauthorized operations in its Application, and reiterates this assertion."⁶ Ilatanet confirmed it was aware of but failed to disclose the following administrative actions:

- April 13, 2007 Final Judgment and Permanent Injunction against Mr. Devine and DCI [Devine Communications, Inc.] by the California Public Utilities Commission (CPUC) and the State of California Department of Justice; and
- Federal Communications Commission (FCC) "red light status" for debt owed by DCI to the FCC for non-payment of its 2009 assessed Telecommunications Relay Services (TRS) contribution.

In addition, Ilatanet reported it was unaware of the following administrative sanctions:

- March 29, 2012 civil judgment against DCI by the California Labor Commission;

⁴ SED is now called the Consumer Protection and Enforcement Division. For consistency, it will be referred to in this decision as CPED.

⁵ All statutory references are to the Public Utilities Code unless otherwise indicated.

⁶ Ilatanet's Reply to SED's Protest at 1.

- 2012 revocation of DCI's certificate of authority by the Hawaii Public Utilities Commission for failure to file an annual report and remit public utility fees;
- 2012 Revocation of DCI's operating authority by the CPUC for failure to pay fees and acquire a bond;
- 2011 fine imposed by the Florida Public Services Commission for a second violation of failing to remit regulatory assessments;
- 2011 citation of DCI by the Illinois Commerce Commission for failure to file an annual report; and
- Revocation of DCI's registration by the Washington Utilities and Transportation Commission for failure to file an annual report and remit regulatory fees.

On July 23, 2014, the assigned administrative law judge (ALJ) issued a ruling requesting additional information including the repayment status of all outstanding judgments and sanctions identified in the ruling and a report of all gross revenues generated in California from the provision of all services, by year, for any year or portion thereof Ilatanet operated in California. On August 15, 2014, Ilatanet filed both a response and an amended response to the July 23rd ruling, but provided only a partial response regarding the repayment status of these obligations.

These responses also reported that, while intrastate calling is not currently blocked using the TND service, due to the pricing structure of the service there is no economic incentive to use it for intrastate calling. These responses reiterated that, contrary to the initial application (and Ilatanet's website as it appeared when the application was filed and throughout much of the proceeding), calling *cards* are not part of the service being offered. Rather, the service was described as follows:

TND is an ANI-based service.⁷ When the customer dials an access number, the customer's calling number identifies the user and, thereby, the status of her available calling allowance.

While Ilatanet is still investigating the extent to which personal identification numbers (PINs) were employed in the past (or may still be employed in some instances today), cards play no role in Ilatanet's service in California, and ANI's rather than PINs are virtually the exclusive means of matching the caller to the caller's account.

These responses also questioned the Commission's jurisdiction over this service on the grounds that the amount of revenue derived from intrastate calls and the percentage of intrastate calls were minimal. On August 25, 2015, Ilatanet filed a second amended response to the July 23rd ruling to clarify some earlier responses, and claimed that the lack of physical *cards* and the fact that PIN numbers are not required bring the Commission's jurisdiction into question, but again fell short of formally challenging the Commission's jurisdiction.

1.1. Motion to Dismiss and Notice of Withdrawal of Application

On September 26, 2014, Ilatanet filed a motion to dismiss its application on the grounds that on or about September 5, 2014, Ilatanet implemented a procedure to block the ability to make intrastate calls using the Ilatanet service, and it therefore no longer provides or seeks to provide services subject to the Commission's jurisdiction. Further, Ilatanet argued that it did not provide service through prepaid phone cards in California⁸, and is not subject to the Commission's jurisdiction under § 885. Finally, Ilatanet argues that because it

⁷ ANI is the acronym for automatic number identification. [Footnote 2 in the original]

⁸ Ilatanet's Motion to Dismiss at 8.

only offered a *de minimus* level of intrastate service, these services are considered interstate (or international), and are therefore only subject to the jurisdiction of the FCC.

On October 9, 2014, CPED filed a response to the motion to dismiss the application, arguing that Ilatanet provides regulated services, and to grant its motion to dismiss would permit Ilatanet to continue to operate without authority. On April 18, 2016, the assigned ALJ filed a ruling denying Ilatanet's motion to dismiss. We affirm the ALJ's ruling.

On July 20, 2016, Ilatanet filed a document titled "Applicant's Withdrawal of Application", in which it argued that Ilatanet sought to withdraw its application because "Applicant provides no services subject to the Commission's jurisdiction nor seeks authority to do so. Accordingly, Applicant hereby withdraws Application 14-01-029."⁹ Though not titled as such, this document is in essence a motion to withdraw the application.

On July 27, 2016, CPED filed a response to Ilatanet's request to withdraw, and argued that Ilatanet cannot exercise a unilateral right to withdraw its application, and to grant Ilatanet's request would permit it to provide a regulated service without operating authority.¹⁰

The Commission has long held there is no unilateral right to withdraw an application. In 1992, the Commission stated that the ability to withdraw an application "ceases to be a matter of right and becomes dependent upon our discretion."¹¹ Allowing an applicant to withdraw "requires a balancing of a

⁹ Applicant's Withdrawal of Application at 1.

¹⁰ CPED Response at 2.

¹¹ D.92-04-027 at 1-3.

general disposition to permit litigants to control their interaction with governmental bodies with the necessity that entities such as courts and this Commission advance the public business while disposing of private claims and petitions.”¹²

A decade later we explained:

“there are limits on a utility’s right to withdraw any application filed at the Commission. We recognize that the Commission has not definitively drawn those limits, stating only that the right does not extend to withdrawal after issuance of a proposed decision. Nonetheless, a utility that presumes a right to withdraw a filed matter bears the risk of a contrary determination by the Commission.”¹³

Here, the Commission and the applicant have all expended significant resources over a span of more than two years processing this application, including amendments and challenges thereto. It is apparent that, if we were to permit the applicant to withdraw the application at this time, it would be free to operate without authority contrary to our rules, laws and decisions. Such an outcome is contrary to the public interest. Ilatanet’s request to withdraw the application is denied.

1.2. Jurisdiction Over Prepaid Calling Cards & Prepaid Calling Services

Throughout this proceeding, Ilatanet has indirectly and directly challenged the Commission’s jurisdiction over this application, first by changing the description of the services offered, and then by making various arguments based on the level of intrastate services provided. As discussed above, in the initial

¹² *Ibid.*

¹³ D.06-01-004 at 4-5.

application, the services were identified as “interexchange services statewide; initially, Applicant intends to provide this service via prepaid debit/calling cards”¹⁴. The application was then amended, retaining the “interstate services statewide” language, to be provided using an automatic number identification (ANI) system, and removing references to “calling cards”.¹⁵ As amended, the application states “Applicant seeks authority to provide resold interexchange service statewide. All services will be routed solely over facilities owned by other certified carriers. Applicant proposes to provide service throughout the state of California. Applicant contemplates no proposed construction or extension of facilities as a result of this Application.”

While Ilatanet contends it has “no facilities, offices or employees” in California, its FCC Form 499 Filer Database as of August 4, 2016, lists Ilatanet’s address for its headquarters, customer service inquiries, Chief Executive Officer (Doug Devine) and Chairman or Other Senior Officer (Christina (sic) Devine) in Vallejo, California.¹⁶

We have determined that the service provided by Ilatanet is a prepaid calling service as defined in Bus. & Prof. Code § 17538.9¹⁷, as discussed more fully below. The Commission is authorized to regulate both prepaid calling cards and prepaid calling services under § 17538.9 and Pub. Util. Code §§ 885-887.

¹⁴ See Application filed January 31, 2014 at 2.

¹⁵ See Amendment to Application filed September 4, 2014 at 2-4.

¹⁶ We take official notice of the Form 499 Filer Database entries noted here.

¹⁷ “Prepaid calling services” or “services” refers to any prepaid telecommunications service that allows consumers to originate calls through an access number and authorization code, whether manually or electronically dialed.

1.3. Prehearing Conference

A prehearing conference (PHC) was held on August 27, 2014, to discuss deficiencies in the application and the possible need for hearings. Ilatanet's principal, Douglas Devine, appeared as directed at the PHC, represented by Ilatanet's current counsel, who asserted that Ilatanet had minimal intrastate revenue of "... about two to three dollars a day for intrastate calls".¹⁸ Devine identified Ilatanet's service as TND based in Vallejo, California, which began offering prepaid TND services in California in early November, 2012, and was designed and marketed to the Filipino-American community in California for calling the Philippines. The company did not have a CPCN from the Commission because Ilatanet's principal was unaware of that requirement. The company is also under "red light status" with the FCC for failure to pay federal fees and surcharges.

Devine testified that he was completely unaware of the 2007 final judgment and permanent injunction entered into between the CPUC, California Attorney General and Devine, despite having signed the settlement agreement on March 30, 2007, which preceded the final judgment and permanent injunction issued on April 13, 2007. Devine also denied any knowledge of Curtis Woo, Esq., his counsel of record in that proceeding. The preponderance of credible evidence supports a finding that Devine signed the settlement agreement and was aware of the final judgment and permanent injunction. His assertions to the contrary are not credible.

Devine identified his sister, Christine Devine, a special education high school teacher living in Alaska, as owner of approximately 20 percent of Ilatanet

¹⁸ PHC Transcript at 5.

stock and serving as a “non-operating limited partner.” She was identified as a managing partner of Ilatanet, though she has no telecommunications experience and plays no role in the operation of the company¹⁹ other than “I can trust her as someone living in America.”²⁰

Ilatanet was directed to file an amended application which conforms to the requirements of Decision (D.) 13-05-035. It did so on September 4, 2014.

2. Discussion

2.1. Certificate of Public Convenience and Necessity

Telecommunications service providers seeking to provide non-dominant interexchange services in California are required to obtain a CPCN from the Commission under § 1001. Service providers offering prepaid calling cards and/or prepaid calling services are also required to register with the Commission. A service provider who does, or can, offer intrastate calling services, regardless of the amount of intrastate traffic or revenue generated, is required to obtain operating authority from the Commission.

Ilatanet has made inconsistent arguments throughout this proceeding. Ilatanet has stated that it needed a CPCN but that it had minimal intrastate revenue. Then, Ilatanet admitted it had operated without authority and was continuing to operate, but argued it did not need a CPCN. Finally, Ilatanet argues that it provides only interstate and international services and does not have any revenue from intrastate services in California, and offers no services subject to the Commission’s jurisdiction.

¹⁹ *Ibid.* at 34 - 35.

²⁰ *Ibid.* at 30.

The description of Ilatanet's service, as discussed above, shows that it is a prepaid telecommunications service which, at least until September 5, 2014, permitted customers to make intrastate calls until that feature was reportedly inactivated.

This Commission has previously denied an application for a CPCN after finding a telecommunications service provider unfit to operate, and liable for daily financial penalties for operating without authority under circumstances very similar to those in this proceeding.²¹ This decision is consistent with that Commission precedent.

We find Ilatanet is unfit to receive a CPCN for operating authority because it offers prepaid calling services in California without authority from this Commission to do so. Ilatanet has a long, adverse regulatory history before this Commission and other regulatory bodies at the state and federal levels, and its application for a CPCN should be denied. Ilatanet should be directed to cease operation of all telecommunications services in California.

2.2. Safety Considerations

Given Ilatanet's long, adverse history with this Commission and others, it is unlikely that Ilatanet will follow the Commission's rules, decisions and General Orders as they pertain to safety. Denying Ilatanet's CPCN therefore benefits the residents of California.

2.3. Fines and Penalties Under §§ 2107 and 2108

Pub. Util. Code §§ 2107-2108 and Decision (D.) 98-12-075 provide guidance on the imposition of fines against a utility. Pub. Util. Code § 2107 provides that

²¹ D.16-04-018 denied NobelTel, LLC a CPCN and imposed a fine of \$146,500, calculated at \$500 per day for operating without authority for 293 days.

"any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense." Section 2108 provides that "every violation ... by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense."

As stated in D.98-12-075, several factors are considered in setting fines: (1) the severity of the offense; (2) the conduct of the utility; (3) the financial resources of the utility; (4) the totality of the circumstances; and (5) the role of precedent.²²

2.3.1. Severity of the Offense

Violations which cause actual physical harm to people or property are generally considered the most severe, with violations that threaten such harm closely following. Economic harm reflects the amount of expense imposed upon the victims of the violation, as well as any unlawful benefits gained by the public utility.

Many potential penalty cases before the Commission do not involve any harm to consumers but are instead violations of reporting or compliance requirements. In these cases, the harm may not be to consumers but rather to the integrity of the regulatory process. Utility compliance with the Commission's

²² 1998 Cal. PUC LEXIS 1016, 71-73

rules and regulations is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.

As we have stated previously, providing service without a CPCN and disregarding the orders of this Commission and other regulatory bodies are serious offenses because they harm the integrity of the regulatory process.²³

2.3.2. Conduct of the Utility

This factor recognizes the important role of the public utility's conduct in (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation. A public utility is responsible for the acts of all its officers, agents, and employees.²⁴ As discussed elsewhere in this decision, the principle applicant, Douglas Devine, has previously held a CPCN from this Commission which was revoked for violation of our rules. He knew or should have known that he needed a CPCN before providing telecommunications services in California. Further, the applicant's various counsel provided conflicting and at times contradictory descriptions of the services provided, and of Ilatanet's history of operating without authority.

2.3.3. Preventing the Violation

All public utilities are required to take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations.

²³ D.04-01-089 at 6.

²⁴ *Ibid.* at 73

The Commission previously revoked the CPCN of Ilatanet's predecessor in interest for failure to abide by our rules. Ilatanet provides a service similar or identical to that previously provided by its predecessor company. Ilatanet only filed its application after it was directed to do so by the Commission, and then sought to evade the Commission's jurisdiction by changing the description of the services being provided and attempting to unilaterally withdraw its application. Ilatanet did nothing to prevent the violation of our rules.

2.3.4. Detecting the Violation

The Commission expects public utilities to diligently monitor their activities. Where utilities have for whatever reason failed to meet this standard, the Commission will continue to hold the utility responsible for its actions. As discussed above, Ilatanet's conduct demonstrates a willful disregard of the Commission's jurisdiction, rules and procedures. Ilatanet did nothing to detect the violation.

2.3.5. Disclosing and Rectifying the Violation

When a public utility is aware that a violation has occurred, the Commission expects the public utility to promptly bring it to the attention of the Commission. The precise timetable that constitutes "prompt" will vary based on the nature of the violation.

The applicant filed an application for a CPCN only when directed to do so by Commission staff, and repeatedly asserted that Ilatanet was operating without authority. The applicant then tried to evade the Commission's jurisdiction by altering the description of the services offered and attempted to unilaterally withdraw its application. These actions are contrary to those of a utility seeking to rectify a violation of the rules.

2.3.6. Financial Resources of the Utility

Effective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.²⁵

In this case, the utility operates primarily from the Philippines, and its exact financial condition would be difficult if not impossible to ascertain. However, the monetary fine imposed in this decision is in line with other fines imposed against Ilatanet by this Commission and others. Further, requiring Ilatanet to cease operation in the large and lucrative California marketplace is a more significant penalty.

2.3.7. Totality of the Circumstances in Furtherance of the Public Interest

Setting a fine at a level which effectively deters further unlawful conduct by the subject utility and others requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case. The Commission will review facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.²⁶

²⁵ *Ibid.* at 75-76.

²⁶ *Ibid.*

As discussed above, the imposition of a fine in this case will serve as a deterrent to Ilatanet and other utilities from flaunting our rules and decisions. Moreover, the removal of this utility from the marketplace in California is the most significant penalty we can impose and best serves the public interest in this situation.

2.3.8. Role of Precedent

The Commission adjudicates a wide range of cases which involve sanctions, many of which are cases of first impression. As such, the outcomes of cases are not usually directly comparable.²⁷

As we recently stated in D.16-05-001, in imposing a fine against a telecommunications company for operating without a CPCN, “While the imposition of fines and penalties under §§ 2107 and 2108 is the Commission’s standard practice, we have not always required a mechanical interpretation of their provisions, but rather have looked to ensure that a penalty is sufficient to deter future violations and is reasonable under the circumstances.” Some examples include:

- D.04-01-039, where we imposed a fine of \$500 against a telecommunications company that provided service without a CPCN for less than a year, we found the penalty “sufficient to deter applicant and others from future violations.”
- D.04-05-049, where we accepted “a voluntary contribution to the State of California General Fund of \$11,000 in lieu of a fine” for selling prepaid phone cards without a CPCN for 5 ½ years, after finding the applicant had access to

²⁷ *Ibid.*

substantially greater resources than the utility addressed in D.04-01-039.

- D.09-05-032, where we adopted a settlement agreement imposing a fine of \$500 for operating without a CPCN for approximately 3 months.
- D.16-04-018, where we denied an applicant a CPCN and imposed a fine of \$146,500 for operating without authority for 293 days ($\$500/\text{day} \times 293 \text{ days} = \$146,500$).

In this case, the applicant has repeatedly disobeyed the orders of this Commission, and has operated without authority for an extensive period of time. Here, based on the applicant's history, Devine knew or should have known that he needed a CPCN to offer these telecommunications services in California. However, as the applicant did ultimately file an application for a CPCN, our fine is based on the minimum fine under § 2107, and a fine of \$228,000 is significant enough to deter similar conduct of others. Therefore, we find that a minimum fine based on \$500 per day for 456 days of operating without authority is appropriate in this instance. In addition, Ilatanet is ordered to cease operation of all telecommunications services in California.

2.4. Conclusion

For the reasons set forth above, the Commission finds that Ilatanet is a telecommunications company subject to the Commission's jurisdiction. Ilatanet offers prepaid calling services in California without authority from this Commission to do so. Ilatanet has a long, adverse regulatory history before this Commission and other regulatory bodies at the state and federal levels. Ilatanet's history of non-compliance with the rules governing prepaid calling services in California renders it unfit to operate in California, and its application for a CPCN should be denied. Ilatanet should be directed to cease operation of all telecommunications services in California, and required to pay a fine of

\$228,000. Any telecommunications company operating within California which provides any unauthorized services to Ilatanet should be required to cease doing so.

3. Categorization and Need for Hearing

On February 27, 2014, Resolution ALJ 176-3331 preliminarily categorized this proceeding as ratesetting, and determined that hearings were not necessary. No evidentiary hearings were held or required, so we confirm the preliminary determination that hearings are not necessary.

4. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Burcham in this matter was mailed to the parties in accordance with § 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 by _____ on _____.

5. Assignment of Proceeding

President Michael Picker is the assigned Commissioner and Dan H. Burcham is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared in the Commission's Daily Calendar on February 12, 2014. A timely protest was filed by the Commission's Consumer Protection and Enforcement Division. A PHC was held on August 27, 2014.

2. Ilatanet, LLC is a prepaid calling service as defined in Business & Professions Code § 17538.9 and is subject to the Commission's jurisdiction under Public Utilities Code § 887.

3. Ilatanet's principal, Douglas Devine, entered into a final judgment and permanent injunction on April 13, 2007, in which Devine was permanently

enjoined and restrained from violating Public Utilities Code §§ 885, 886 or 1013 by “advertising, issuing, distributing, marketing, selling or otherwise offering Prepaid Calling Cards or any other telecommunications service in California (emphasis added) without first obtaining a valid certificate of public convenience and necessity from the Commission or, alternatively, being approved to register by the Commission as a non-dominant interexchange carrier authorized to engage in such activities” (Final Judgment and Permanent Injunction issued April 13, 2007 at 3–4) and required to pay fines totaling \$118,000 in relation to his activities with his company Devine Communications, Inc., predecessor-in-interest to the applicant in this proceeding.

4. The Commission revoked the operating authority of Devine Communications, Inc., Ilatanet, LLC’s predecessor in interest, on April 19, 2012, pursuant to Resolution T-19539.

5. Ilatanet has a long history of regulatory non-compliance, and when it filed this application failed to disclose sanctions and penalties which had been imposed upon it by the Commission, Florida Public Services Commission, Washington Utilities and Transportation Commission, Hawaii Public Utilities Commission, Illinois Commerce Commission and the California Labor Commission.

6. Ilatanet is under “red light status” with the FCC for failure to pay TRS contributions.

7. Ilatanet’s principal place of business in California is P.O. Box 171, Vallejo, California 94590.

8. Ilatanet provides a service for which a certificate of public convenience and necessity is required.

9. Ilatanet is operating without authority contrary to state law and Commission rules and regulations.

10. Ilatanet operated without authority for 456 days before filing this application for a certificate of public convenience and necessity.

11. A fine of \$228,000 based on \$500 per day for operating without authority, along with requiring Ilatanet to cease operations in California, is a significant and appropriate penalty.

Conclusions of Law

1. Ilatanet has failed to demonstrate that it has the managerial and technical fitness to operate as a non-dominant interexchange carrier.

2. Ilatanet's motion to withdraw its application should be denied.

3. Ilatanet's application for a certificate of public convenience and necessity should be denied.

4. Ilatanet should be subject to a fine of \$228,000 under §§ 2107 and 2108 for operating without authority prior to filing its application.

5. All telecommunications service providers in California should be directed to cease providing any services to Ilatanet.

6. Ilatanet should be required to cease and desist providing all telecommunications services in California.

O R D E R

IT IS ORDERED that:

1. The motion of Ilatanet, LLC, to withdraw its application is denied.

2. The application of Ilatanet, LLC, for a Certificate of Public Convenience and Necessity to operate as a non-dominant interexchange carrier in California pursuant to § 1001 is denied.

3. Ilatanet, LLC, must pay a fine of \$228,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, California 94102, within 30 days of the effective date of this order. Write on the face of the check or money order "For deposit to the General Fund per Decision [INSERT FINAL DECISION #]."

4. Ilatanet, LLC, shall immediately cease and desist providing any unauthorized services in California.

5. All telecommunications service providers in California shall cease providing any services to Ilatanet, LLC.

6. If Ilatanet, LLC, applies for operating authority in California to provide any form of telecommunications service in the future, it shall include a reference to this Decision in its application.

7. Application 14-01-029 is closed.

This order is effective today.

Dated _____, 2016, at San Francisco, California.