

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Global Telco Group Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Interexchange Telecommunications Services within California.

Application 13-04-018
(Filed April 4, 2013)

DECISION GRANTING GLOBAL TELCO GROUP INC. A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE RESOLD AND LIMITED FACILITIES-BASED INTEREXCHANGE SERVICE**1. Summary**

Pursuant to Public Utilities Code Section 1001,¹ we grant Global Telco Group a certificate of public convenience and necessity to provide resold and limited facilities-based interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Background

Global Telco Group (GTG) is a corporation operating and existing under the laws of the State of California, having registered with the State on October 6, 2008. GTG sells prepaid phone cards providing international calling services.

¹ All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

Applicant's principal place of business is located at 2362 Qume Drive, Ste. C, San Jose, CA 95131.

GTG began providing prepaid phone card services in California on April 2, 2009 and distributes its cards through Globe Tel Communications Inc. (GTC). GTC acts as the exclusive distributor of GTG's prepaid phone cards to liquor stores, gas stations, convenience stores and other locations.

On August 28, 2012, the Commission's Safety and Enforcement Division (SED) staff found two GTG prepaid phone cards' names "Todo Latino" and "Figi" at Fremont Center Liquor store located at 2505 East Fremont Street, Stockton, California 95205. SED verified that GTG did not have Commission authority to operate in California, and notified the Commission's Communication Division (CD) of that fact. On January 15, 2013, CD sent GTG a letter requesting the Applicant cease and desist operating in California or apply for operating authority.

On April 4, 2013, GTG filed an application for certificate of public convenience and necessity (CPCN) to provide limited facilities-based, resold interexchange telecommunications services in California. The Application appeared on the Commission's Daily Calendar on May 3, 2013.

On June 3, 2013 SED filed a protest alleging GTG violated Sections 885-886 of the Public Utilities Code by operating without authority and Rule 1.1 of the Commission's Rules of Practice and Procedure by failing to disclose that fact in its Application.

A prehearing conference was held July 24, 2013. The parties stated that SED and the Applicant were engaged in settlement negotiations and are hopeful of resolution. The parties were directed to keep the Commission up to date with

their progress and the issuance of the scoping memo was held in abeyance pending possible settlement.

On September 27, 2013, SED and GTG submitted a Joint Motion for Approval of Settlement Agreement, along with a copy of the settlement agreement itself.²

On November 7, 2013, the assigned Administrative Law Judge (ALJ) issued a ruling requesting additional information from the Applicant and that information was provided on December 2, 2013.

3. The Settlement Agreement and Terms

As noted in the Background above, the Application was protested, and the parties to the proceeding were able to reach a settlement. The Parties agree that the proposed Settlement Agreement is intended to fully resolve all issues SED's protest raised. In the Joint Motion, the settling parties summarize the key terms and commitments in the Settlement Agreement as follows:

1. Applicant acknowledges that GTG failed to obtain the required authority from the Commission prior to its prepaid calling cards being sold to California Consumers.³
2. Applicant will pay \$12,500 to the State of California General Fund within 30 calendar days of the date of the Commission's approval of the Settlement Agreement.⁴

The Settlement Agreement is in the public interest. It is consistent with the Commission's well-established policy of supporting resolution of disputed matters through settlement, and it avoids the time, expense, and uncertainty of

² The Settlement Agreement is attached to this Decision as Attachment A.

³ See Settlement Agreement Paragraph 6.

⁴ *Ibid.* at Paragraph 7.

evidentiary hearings and further litigation. We find that the benefits to the public, including payment to the General Fund, outweigh the benefits of continued litigation and its associated cost.

We have historically favored settlements that are fair and reasonable in light of the record as a whole. We find that the joint statement of facts in the Settlement Agreement provide clear and succinct description of the facts surrounding the dispute between the parties.

Further, we find that nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission decisions, and it provides sufficient information for the Commission to discharge its future regulatory obligations with respect to the parties and their interests and obligations. The Settlement Agreement does not contradict current Commission rules and it does not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding.⁵

As for the penalty amount proposed in the Settlement Agreement, we look to the criteria established in Decision (D.) 98-12-075, Appendix B, which has provided guidance in similar cases. We consider the following criteria: 1) the severity of the economic or physical harm resulting from the violation; 2) the utility's conduct to prevent, detect, disclose, and rectify the violation; 3) the utility's financial resources; 4) the public interest involved; 5) the totality of the circumstances; and 6) Commission precedents.

We find the penalty amount of \$12,500.00 to be reasonable. The Applicant began operation in 2009, and only submitted to the jurisdiction of the

⁵ See Note 13.

Commission after SED investigation. Since no complaints have been filed with the Commission regarding Applicant's calling cards, we find minimal economic harm to its customers. Based on Commission precedent and a review of the Applicant's finances, the \$12,500.00 penalty is reasonable, and represents a significant penalty to the Applicant, but would not impact its ability to continue providing service to its customer base. We find the Settlement Agreement is in the public interest, reasonable in light of the record as a whole, and consistent with law. It resolves all issues before the Commission in this proceeding.

4. California Environmental Quality Act (CEQA)

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. GTG states that it does not intend to construct any facilities other than the softswitch hardware currently installed in an existing data center,⁶ so granting this application will not have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, GTG must file for additional authority, and submit to any necessary CEQA review.

5. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up

⁶ See Applicant's response to inquiries of assigned ALJ, subsection 1.

expenses.⁷ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.⁸ In its response to ALJ inquiry, GTG provided proof of Certificates of Deposits in the amount of \$100,000 and \$52,000,⁹ representing \$100,000 plus the deposits required by AT&T, SPARKLE and TATA Communications Inc. available to GTG for one year following certification. Since GTG has provided documentation that it possesses resources that are reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

GTG proposes to be interconnected with Global Tel Communications, PacWest Telecom, O1 Communications, Phoenixsoft Inc., Matrix Telecom, AT&T, Dishnet Wireless, SPARKLE, and TATA Communications. As stated above, GTG has provided documentation that it has the funds available for the deposit required by AT&T, SPARKLE and TATA Communications Inc. and GTG states that no deposit is required by the other carriers it proposes to work interconnect with.

Therefore, no additional resources are required at this time to cover deposits.

⁷ The financial requirement for Competitive Local Exchange Carriers is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

⁸ The requirement for Competitive Local Carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

⁹ See Applicant's response to ALJ Inquiries Subsection 3.

6. Technical Qualifications

To be granted a CPCN for authority to provide interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.¹⁰ GTG supplied biographical information on its management in Exhibit 2 to its application, as well as in its responses to the assigned ALJ's request for additional information that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its application, GTG verified that no one associated with or employed by GTG as an affiliate, officer, director, partner, or owner of more than 10% of GTG was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that GTG is in compliance with the requirements of D.95-12-056.

7. Tariffs

Applicant has requested authority to operate on a de-tariffed basis, this request is granted as GTG will not provide Basic Local, Access or Special Access

¹⁰ D.95-12-056 at Appendix C, Rule 4.A.

Services. GTG states in its application that it will offer its services at rates that are competitive with the rates of other interexchange service carriers in California and that its contracts with customers will be consistent with the consumer protection rules established in D.98-08-031 and contain all applicable commission fees and surcharges.

8. Expected Customer Base

GTG provided its estimated customer base for the first and fifth years of operation in Section 14 of its application. Therefore, GTG has complied with this requirement.

9. Conclusion

As a result of the above considerations, we find that the Settlement Agreement is (1) in the public interest; (2) reasonable in light of the record; and (3) consistent with the law. The record of this proceeding consists principally of the Application, the Protest of SED, and the Joint Motion to approve the Settlement Agreement. We find that a record based on these filed materials is adequate to enable us to determine that the settlement meets the Commission's standards for approval of settlements in general. Therefore the Settlement Agreement is approved.

We also conclude that the application conforms to our rules for certification as a competitive interexchange carrier. Accordingly, we grant GTG a CPCN to provide limited facilities based and resold interexchange telecommunications service in the service territory of Global Tel Communications, PacWest Telecom, O1 Communications, Phoenixsoft Inc., Matrix Telecom, AT&T, Dishnet Wireless, SPARKLE, and TATA Communications and interexchange service in California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

10. Request to File Under Seal (Include only if requested by applicant)

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, GTG has filed a motion for leave to file Exhibit 5 to the application as confidential materials under seal. GTG represents that the information is sensitive, and disclosure could place GTG at an unfair business disadvantage. We have granted similar requests in the past and do so here.

11. Categorization and Need for Hearings

In Resolution ALJ 176-3314, dated May 9, 2013, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. On June 3, 2013, SED filed a protest to the application. Hence, on July 24, 2013, the assigned ALJ held a pre-hearing conference. Since the parties have reached Settlement and the Joint Motion for Approval of Settlement Agreement have been filed, no hearings are necessary in this proceeding

12. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

13. Assignment of Proceeding

Michael Peevey is the assigned Commissioner and S. Pat Tsen and Richard Clark are the co-assigned ALJs in this proceeding

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on May 3, 2013. On June 3, 2013, SED filed a protest to the application. On July 24, 2013, the assigned ALJ held a pre-hearing conference.
2. The parties negotiated and reached settlement. A Joint Motion for approval of settlement was filed on September 27, 2013.
3. The Settlement Agreement is (1) reasonable in light of the record; (2) consistent with the law; and (3) in the public interest.
4. The Settlement Agreement conveys to the Commission sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.
5. GTG has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. GTG has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.
7. GTG's management possesses sufficient experience, knowledge, and technical expertise to provide interexchange services to the public.
8. No one associated with or employed by GTG as an affiliate, officer, director, partner, or owner of more than 10% of GTG was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000 et seq. of the California Business and Professions Code, or for any actions

which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

9. GTG will not provide Basic Local, Access or Special Access Services and may be granted a CPCN on a de-tariffed basis.

10. GTG provided an estimate of its customer base for the first and fifth year of operation.

11. Pursuant to Rule 11.4, GTG filed a motion for leave to file confidential materials under seal, including Exhibit 5 to the application.

12. Approving the CPCN Application and the Settlement Agreement is the relief requested by the parties and this relief is not opposed by any party in this proceeding.

Conclusions of Law

1. Nothing in the Settlement Agreement contravenes any statute or Commission decision or rule.

2. The benefits to the public of the Settlement Agreement outweigh the benefits of continued litigation.

3. With the filing of the Settlement Agreement, this proceeding becomes an uncontested matter. In approving the transaction and accepting the Settlement Agreement, we are granting the relief requested.

4. The penalty level of the Settlement Agreement is reasonable given the totality of the circumstances.

5. The Settlement Agreement should be approved.

6. Hearings are not necessary in this proceeding

7. GTG should be granted a CPCN to provide resold and limited facilities based local and interexchange telecommunications service in the service territories of Global Tel Communications, PacWest Telecom, O1

Communications, Phoenixsoft Inc., Matrix Telecom, AT&T, Dishnet Wireless, SPARKLE, and TATA Communications, subject to the terms and conditions set forth in the Ordering Paragraphs.

8. GTG, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

9. Hearings are not necessary in this proceeding.

10. GTG's motion to file under seal its Exhibit 5 to the Application, should be granted for two years.

O R D E R

IT IS ORDERED that:

1. The September 27, 2013 Joint Motion by Global Telco Group, Inc. and the Commission's Safety and Enforcement Division, for Commission Adoption of Settlement pursuant to Article 12.1 of the Commission's Rules of Practice and Procedure is granted and the Settlement Agreement, Attachment A to this decision, is approved.

2. Global Telco Group, Inc. shall make a settlement payment of \$12,500.00 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, San Francisco, California 94102, within 30 days of the effective date of this order. Global Telco shall write on the face of the check or money order "For deposit to the General Fund per Decision _____."

3. A certificate of public convenience and necessity is granted to Global Telco Group to provide resold/limited facilities-based interexchange telecommunications services in the territories of Global Tel Communications, PacWest Telecom, O1 Communications, Phoenixsoft Inc., Matrix Telecom, AT&T, Dishnet Wireless, SPARKLE, and TATA Communications, subject to the terms and conditions set forth below.

4. The corporate identification number assigned to Global Telco Group, U-7257-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

5. Global Telco Group must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Global Telco Group must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier 1 advice letter annually, but not later than March 31, with a copy of the executed bond.

6. Global Telco Group must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

7. Although Global Telco Group is granted a CPCN on a de-tariffed basis, it is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

8. Global Telco Group must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

9. Global Telco Group must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers should report user fees even if the amount due is \$0. In accordance with Decision 13-05-035, Global Telco Group must pay a minimum user fee of \$100.00 or 0.18% of gross intrastate revenue, whichever is greater.

10. Prior to initiating service, Global Telco Group must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

11. Global Telco Group must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

12. Global Telco Group must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

13. Global Telco Group must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

14. Global Telco Group's motion to file under seal/motion to seal Exhibit 5 to its Application is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and shall not be made accessible or disclosed to anyone other than the Commission staff, or on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge, the Law and Motion Judge, the Chief Judge, or the Assistant Chief Judge, or as ordered by a court of competent jurisdiction. If Global Telco Group believes that it is necessary for this information to remain under seal for longer than two years, Global Telco Group may file a new motion stating the justification for further withholding of the information from public inspection. This motion shall be filed at least 30 days before the expiration of today's limited protective order.

15. The hearing determination for this proceeding is changed to no hearings necessary.

16. Application 13-04-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.