

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Toly Digital Networks, Inc.
for Registration as an Interexchange Carrier
Telephone Corporation Pursuant to the
Provisions of Public Utilities Code Section
1013.

Application 15-01-006
(Filed January 7, 2015)

**DECISION GRANTING APPLICATION
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE RESOLD INTEREXCHANGE SERVICES**

Table of Contents

Title	Page
DECISION REGARDING APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE RESOLD INTEREXCHANGE SERVICES	1
Summary	2
1. Jurisdiction.....	2
2. Summary	2
3. Settlement Agreement.....	5
4. Discussion	6
5. Financial Qualifications	10
6. California Environmental Quality Act (CEQA).....	12
7. Technical Qualifications	12
8. Tariffs.....	14
9. Map of Service Territory	15
10. Expected Customer Base	15
11. Conclusion	15
12. Request to File Under Seal	16
13. Categorization and Need for Hearings	16
14. Waiver of Comment Period	17
15. Assignment of Proceeding	17
Findings of Fact	17
Conclusions of Law.....	19
ORDER	20
 ATTACHMENT A	 Requirements Applicable to Interexchange Carriers
ATTACHMENT B	Annual Report
ATTACHMENT C	Calendar Year Affiliate Transaction Report
ATTACHMENT D	Settlement Agreement

**DECISION GRANTING APPLICATION
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE RESOLD INTEREXCHANGE SERVICES**

Summary

Pursuant to Pub. Util. Code § 1001, we grant the application of Toly Digital Networks, Inc. (Toly) a certificate of public convenience and necessity (CPCN) to provide resold interexchange service in California subject to the terms and conditions set forth in this order. We also adopt and approve the Settlement Agreement as set forth in Attachment D, as discussed below. Toly seeks authority from the Commission to operate as a switchless reseller statewide in California. Toly's principal place of business is 1005 W Indiantown Road, Ste. 201, Jupiter, Florida 33458.

This proceeding is closed.

1. Jurisdiction

Toly Digital Networks, Inc. (Toly) provides telecommunications services and is thereby a telephone corporation and public utility subject to our jurisdiction. Pub. Util. Code § 216(a) defines the term "public utility" to include a "telephone corporation," which in turn is defined in Pub. Util. Code § 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

2. Summary

On January 7, 2015, Toly¹ filed its application with the Commission using the simplified registration process pursuant to Pub. Util. Code § 1013, seeking

¹ Toly registered as of April 11, 2014, in the State of California as a foreign corporation.

authority to operate as a switchless reseller to provide statewide voice and data telecommunications service in the State of California.²

Notice of the application appeared on the Commission's Daily Calendar on January 14, 2015. Pursuant to Rule 7.1, in Resolution ALJ 176-3349, dated January 15, 2015; the Commission preliminarily categorized the Toly application as ratesetting and determined that no hearings were necessary.³

The Commission's Safety and Enforcement Division (SED) filed a protest to Toly's application on February 13, 2015. In its protest, SED alleged that Toly violated Pub. Util. Code §§ 1001 and 1013 by operating in California without authority from July 1, 2014, to the present⁴ and Rule 1.1 of the Commission's Rules of Practice and Procedure by failing to disclose the existence of another adverse regulatory action in its application.

On May 1, 2015, the assigned Administrative Law Judge (ALJ) issued a ruling requiring Toly to file additional information to process the application. On May 18, 2015, a Prehearing Conference (PHC) was held and a status update

² While the application was filed pursuant to Pub. Util. Code § 1013, an expedited and ministerial registration process, the protest of the Commission's Safety and Enforcement Division and assignment to an ALJ removed it from the registration track.

³ Unless otherwise noted, items labeled "Rule" refer to the Commission's Rules of Practice and Procedure.

⁴ On March 31, 2014, Toly entered into an agreement with Cal Ore Telephone Company (Cal Ore). Cal Ore is a California rural Incumbent Local Exchange Carrier (ILEC) with limited switching or transmission facilities of its own. In order for Cal Ore to complete certain long distance calls for its customers, Cal Ore must route those calls to another company with which Cal Ore contracts. Cal Ore bills its customers for the call and collects the charges from its customers. Cal Ore then pays the other company pursuant to a contract between Cal Ore and the company. The customer has no relationship with the other company. In mid-2014, Toly became that other company. On or about June of 2014, pursuant to a contractual agreement with Toly, Cal Ore programmed its switch to begin directing certain calls originated in California to Toly for termination.

telephonic conference was set for June 8, 2015. On May 22, 2015, Toly filed a response to the ALJ's May 1, 2015 ruling⁵, which the ALJ determined was insufficient.⁶

Because of the failure of Toly to adequately respond to the ALJ's May 1, 2015 ruling, the ALJ issued an email ruling on May 22, 2015, cancelling the June 8, 2015 status conference call. On June 4, 2015, the ALJ issued another ruling directing Toly to supply additional information demonstrating that the company has sufficient financial resources to meet its operational expenses during the first year. This ruling also set June 26, 2015 for a status conference update. On June 15, 2015, Toly submitted a response to the ALJ's June 4, 2015 ruling.⁷

On June 26, 2015, during the status update conference, Toly and SED (the Parties) informed the ALJ that they reached a settlement in principle, and that the agreement would resolve the issues raised in SED's protest. In a following e-mail ruling of June 29, 2015, the ALJ ordered the Parties to submit the settlement agreement along with a joint motion for approval of said settlement by July 13, 2016. In compliance with this ruling, the Parties submitted the settlement agreement as ordered.

⁵ By separate motion dated May 21, 2015, Toly filed a motion for an order granting leave to file under seal the information contained in Exhibit 5B to its Response to the ALJ Ruling.

⁶ In its response to the ALJ's Ruling dated May 1, 2015, Toly submitted the same selected pages of its business bank account statements that were submitted in the envelope marked "confidential" when Toly initially filed its application. This was done even though the ALJ advised Toly in the May 1, 2015 ruling that this information was not acceptable and ruled that Toly needed to submit additional information.

⁷ By separate motion dated June 15, 2015, Toly filed a motion for an order granting leave to file under seal the information contained in Attachments A and B to its Response to the ALJ Ruling.

On July 8, 2015 the ALJ issued an e-mail ruling requesting additional information concerning potential issues that were raised during a background investigation check performed on Toly.⁸ On July 13, 2015, the ALJ issued another e-mail ruling requesting that Toly provide a map of its service territory. On July 17, 2015, Toly responded to the ALJ's rulings.⁹

3. Settlement Agreement

On July 13, 2015, the Parties filed a motion for approval of a Settlement Agreement. Based on discovery obtained by SED in its investigation and voluntary disclosures by Toly, the Parties agreed to a set of facts as the basis for entering into the Settlement Agreement attached as Attachment D of this decision.

The Settlement Agreement resolves all issues in SED's protest and investigation. In recognition of Toly's mistaken belief that a Consent Decree regarding its 2011 Registration Application with the Federal Communications Commission (FCC) was not reportable pursuant to Questions 8 and 9 of the Commission's Registration form, the Settlement Agreement calls for Toly to pay penalties to the State of California General Fund in the amount of \$6,000.¹⁰ The \$6,000 penalty will be paid according to the following schedule: a) Toly will

⁸ The background investigation revealed that a tax lien was filed against Toly by the State of New York in 2006 and the State of Mississippi in 2013.

⁹ By separate motion dated July 17, 2015, Toly filed a motion for an order granting leave to file under seal the information contained in Attachments A and B to its Response to the ALJ Ruling.

¹⁰ Toly acknowledges that, while its intent was not to conceal from the Commission some disqualifying or harmful aspect of Toly's business history, it failed to disclose information in its Registration Application pertaining to the Consent Decree; that the Consent Decree terminated an investigation against Toly for an apparent failure to timely submit a compliance certificate for the year 2007 pursuant to FCC regulations (47 C.F.R § 64.2009(e)); and that pursuant to the Consent Decree, Toly made a "voluntary contribution to the United States Treasury of \$5,000.

remit \$2,000 to the State of California General Fund within 30 calendar days of the date of the Commission's approval of this Settlement Agreement; and b) Toly will remit four payments of \$1,000 each to the State of California General Fund every 60 days thereafter until the \$6,000 is paid in full.

The Parties also agree that Toly shall pay retroactive user fees during the period of July 1, 2014 to the date of the Settlement Agreement. For 2014, Toly shall pay the Commission \$100 plus 25 percent interest fee pursuant to Pub. Util. Code § 405, for a total of \$125. The user fee, with interest of \$25 for 2014 shall be paid within 30 calendar days from the date of the Commission's approval of this Settlement Agreement.

The Parties argue that the Settlement Agreement reasonably addresses the issue of Toly's failure to disclose to the Commission that it entered into a Consent Decree with the FCC and Toly's failure to pay mandated user fees.

As discussed below, since the Settlement Agreement reasonably resolves all disputed issues, no hearings are necessary in this proceeding.

4. Discussion

In evaluating a settlement, we are guided by Rule 12.1(d). We have historically favored settlements as a means of resolving contested issues where the settlement is in the public interest, reasonable in light of the record, and consistent with the law.¹¹ The instant Settlement Agreement, attached to this decision as Attachment D satisfies these criteria. Accordingly, we adopt the Settlement Agreement, as one basis for granting Toly a CPCN to provide resold interexchange service in California. Approval of Toly's application is

¹¹ Rule 12.1(d).

conditioned on its compliance with the terms of the Settlement Agreement. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

Approving the Settlement Agreement is consistent with our policy supporting resolution of disputed matters through settlement, and avoids the time, expense, and uncertainty of evidentiary hearings and further litigation. The benefits of approving this settlement, including Toly's payment of penalties to the General Fund and 2014 user fees with interest, offers a reasonable resolution in comparison to continued litigation and the associated costs.

The Settlement provides a clear and succinct description of the facts at issue in this application. In the Settlement Agreement, Toly acknowledges that it failed to disclose in its Registration Application the Consent Decree that it entered into with the FCC. Toly contends that its actions were not deliberate or done to conceal any information from the Commission and that it was acting upon the mistaken belief that this information did not need to be reported. Toly does however acknowledge that this was inappropriate and that it should have reported this information in its Registration Application.

The Parties also acknowledge that SED examined the issue of whether Toly would have been required to pay any user fees and/or surcharges during the period of July 1, 2014 to the date of the settlement. SED consulted with the Commission's Communications Division and found that, because Toly was reselling services to Cal Ore at wholesale rates during the period in question, it would appear that Toly would not be responsible or obligated to collect and remit surcharges during the period of July 1, 2014, to the date of the settlement. Toly would, however, still be required to file the surcharge report even though

its intrastate revenue for owed surcharges is zero. Accordingly, the Parties agreed that the Settlement Agreement would not include any payment of past due surcharges.

Although there are no past due surcharges, Toly will be held responsible for user fees during the period of time from July 1, 2014 to December 31, 2014. The Parties acknowledge that user fees are paid annually to the Commission and are based on the Commission-established rate in effect at the time. Currently, and during the period in question, the annual user fee was and is set at 0.18 percent of gross intrastate revenue, or a minimum of \$100, whichever is greater. In this case, \$100 is greater than 0.18 percent of Toly's gross intrastate revenue. The Parties also agreed that Toly would be subject to 25 percent interest fee pursuant to Pub. Util. Code § 405.

The Settlement Agreement also acknowledges the existence of a dispute regarding Toly's operation in California without authority from the period of July 1, 2014 to the present. Toly maintains that it did not operate without authority during this time because, according to Toly, it did not satisfy the requisite "dedication requirement" as stated in certain California case law for status as a public utility nor "held out" intrastate service to the public in California.¹² In contrast, SED maintains that Toly did meet the definition of a public utility during the period of July 1, 2014 to the present, and thus was required to obtain Commission authority prior to operating.

The Parties did not resolve this issue in the Settlement Agreement. The Settlement agreement contends that it is unnecessary to resolve this dispute, as

¹² See, *Richfield Oil Corporation v. Public Utilities Commission*, 54 Cal. 2d 419 (1960) and Decision (D.) 84-01-037 and D. 84-06-113.

Toly has subsequently applied for Commission authority to operate and, with adoption of the Settlement Agreement, SED withdraws its protest such that no party now opposes Toly's request for authority. However, we disagree. Prior to filing its CPCN application Toly was operating in California without authority of the Commission.

Although Toly was operating without authority, the Settlement Agreement adequately resolves this issue. In light of the fact that Toly subsequently sought Commission authority to operate in California when it filed its application on January 7, 2015, and given the fact that Toly affirms that it will fully meet its regulatory and legal obligations and its responsibilities to its customers and members of the public in California in the future, we agree that approving this Settlement Agreement far outweighs the cost of litigating this matter further.

The Settlement Agreement does not contravene any statutory provisions or prior Commission decisions, and it provides sufficient information for the Commission to discharge future regulatory obligations with respect to the parties and their interests and obligations. The Settlement Agreement does not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding.

Approving the Settlement Agreement holds Toly accountable for the consequences of its prior violations of Commission rules by assessing penalty payments. In assessing the reasonableness of the \$6,000 penalty payments required by the Settlement, we look to the criteria in D.98-12-075, Attachment B, which provided guidance in similar cases. We consider: 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.

Based on these criteria, Commission precedent, and a review of the Applicant's finances, we conclude that the \$6,000 penalty is reasonable. It represents a significant penalty, but would not impact Toly's ability to continue providing service to its customer base. We thus find the Settlement Agreement is in the public interest, reasonable in light of the record as a whole, and consistent with law.

The California Public Utilities Code and General Order (GO) 153 mandates the collection of fees and surcharges from utilities under Commission jurisdiction.¹³ As noted above, Toly was reselling services to Cal Ore at wholesale rates during the period in question and therefore, the Commission staff in Communications Division concluded that Toly would not be obligated to collect and remit surcharges during this time. However, Toly would still have to file the surcharge report even though their intrastate revenue for owed surcharges is zero.

Additionally, Toly would be responsible for user fees during the time period of July 1, 2014 to December 31, 2014 and annual user fees thereafter. Toly owes past due user fees in the amount of \$100 plus interest of \$25. The total for past due user fees including interest is \$125.

5. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide resold interexchange services must demonstrate that it has a minimum of \$25,000 cash

¹³ See Pub. Util. Code § 431 and GO 153.

or cash equivalent to meet the firm's start-up expenses.¹⁴ 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.¹⁵

On June 4, 2015, the ALJ issued a ruling ordering Toly to submit additional information in connection with its application. On June 15, 2015, Toly provided the required information as Attachments A and B of its response to the ruling. Attachment A was a letter of credit and Attachment B was copy of its balance sheet as of December 31, 2014. Since Toly has provided documentation that it possesses resources that are reasonably liquid and available, it has demonstrated it has sufficient funds to meet its start-up expenses and has fulfilled the financial qualifications requirement.

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Toly filed a motion on June 15, 2015, for leave to file Attachments A and B to the response of the ALJ's ruling as confidential materials under seal. Toly represents that the information is sensitive, and disclosure could place Toly at an unfair business disadvantage. We have granted similar requests in the past and do so here.

As required by D.13-05-035, Toly is required to maintain a continuous performance bond in the amount of \$25,000, issued by a corporate surety

¹⁴ 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.

¹⁵ 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 Interexchange Carriers (IECs) is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

company authorized to transact surety business in California.¹⁶ As part of its application Toly submitted a Telephone Corporation Surety Bond in the amount of \$25,000, issued by Liberty Mutual Insurance Company.

6. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, the Commission examines projects subject to our discretionary approval to determine any potential environmental impacts in order to ensure that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

In its response to the ALJ's ruling issued on May 1, 2015, Toly submits that its CPCN request is exempt from CEQA because it does not intend to construct any facilities. Because the requested CPCN authority is only to provide resold interexchange service, no construction of facilities is involved. Accordingly, we find that there is no possibility that granting this application will have an adverse impact upon the environment.

Granting this application does not preclude Toly from filing a separate application at a later date to pursue a facilities-based CPCN. Before it can begin to construct facilities Toly must file for additional CPCN authority, and submit to any necessary CEQA review. Toly must not begin construction of such facilities until Commission approval is requested and is granted.

7. 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

¹⁶ See D.13-05-035, Attachment B (re: Rulemaking 11-11-006 Revising the Certification Process for Telephone Corporations and the Registration Process for Wireless Carriers).

in telecommunications or a related business.¹⁷ Toly supplied biographical information on its management in response to the ALJ's ruling issued on May 1, 2015.

In its Application, Toly states that “[n]either applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: ... (a) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.”¹⁸

SED staff discovered, however, that Toly entered into a Consent Decree with the FCC in the FCC matter of EB-08-TC-5721 and made a voluntary contribution to the United States Treasury in the amount of \$5,000. Toly did not disclose this fact in its application, subsequently claiming that it mistakenly believed that this information was not reportable because the Consent Decree terminated an investigation against Toly for an apparent failure to timely submit a compliance certificate for the year 2007 and that it mistakenly thought the term “voluntary contribution” did not connote to Toly the gravity of a “sanction.” As previously noted, we conclude the payment of penalties, as called for in the Settlement Agreement, reasonably addresses Toly's past violations, including its failure to disclose that it made a voluntary payment to the FCC.

In its protest, SED Staff did not allege that it found any consumer complaints filed against Toly with the FCC or the Commission's Consumer Affairs Branch. Additionally, a search of the Better Business Bureau data base

¹⁷ D.95-12-056 at Appendix C, Rule 4.A.

¹⁸ See Application, Sworn Affidavit of Mark Suto, Vice President of Toly.

and Ripoffreport.com did not reveal any complaints about Toly. Furthermore, the ALJ performed a background check on the top level executives of Toly and ran a business report on Toly itself.

The business report revealed the existence of two liens that were filed against Toly. The first lien was filed by the State of New York in 2006 and the second one by the State of Mississippi in 2013. In response to a ruling issued by the ALJ concerning the tax liens, Toly submitted sufficient information to establish that the lien by the State of New York was created in error by the New York Department of Taxation and Finances and the lien filed by the State of Mississippi was caused when the company that Toly used to prepare its tax returns in that state made an error. As soon as Toly became aware of the problem it immediately corrected the error and satisfied the tax lien.¹⁹

Based on these facts, we conclude that Toly has demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

8. Tariffs

Toly does not provide basic local, access or special access services. Based on the limited forms of service that Toly is authorized to offer pursuant to the CPCN granted herein, Toly is not required to file tariffs as a condition of offering telecommunications services as proposed in its application.

¹⁹ Pursuant to Rule 11.4 Toly by separate motion, Toly filed a motion for an order granting leave to file under seal its complete and detailed response regarding the tax liens. In addition to explaining the circumstances in complete details, Toly submitted proof that these matters have been resolved. Toly represents that the information in its response is sensitive, and complete disclosure could harm Toly's business reputation. Therefore, we grant Toly's motion to file its complete response and Attachments A and B under seal.

9. Map of Service Territory

In response to a ruling issued by the assigned ALJ on July 13, 2015, Toly provided Attachment C on July 17, 2015, which is a map of its proposed service territory.

10. Expected Customer Base

Toly provided its estimated customer base for the first and fifth years of operation in its application. Toly expects to retain Cal Ore as its sole customer in California beginning in the first and extending into the fifth year. It does not know at this time whether any other rural CLEC customers will be added in the future. Therefore, Toly has complied with this requirement.

11. Conclusion

As a result of the above considerations, we conclude that the application, as modified by the terms and conditions in the Settlement Agreement, warrants approval. We find the Settlement Agreement complies with Rule 12.1(d) and 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 our standards for approval of settlements. Therefore the Settlement Agreement is approved.

The CPCN granted by this decision provides benefits to Toly and corresponding obligations. Toly receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with § 251 of the Federal Communications Act (47 U.S. C. 251) and if applicable, it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this

decision. Toly is obligated to comply with all provisions of the Public Utilities Code and Commission Rules, General Orders, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to, consumer protection rules, tariffing, and reporting requirements. Moreover, Toly is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Attachment B of this decision, and to adhere to Pub. Util. Code § 451 which states that every public utility "...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

12. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Toly has filed motions for leave to file Exhibit 5B to its Response to ALJ Ruling on May 21, 2015; Attachments A and B to its Response to ALJ Ruling on June 15, 2015; and Attachments A and B to its Response to ALJ Ruling on July 17, 2015 as confidential materials under seal. Toly represents that the information is sensitive, and disclosure could place Toly at an unfair business disadvantage. We have granted similar requests in the past and do so here.

13. Categorization and Need for Hearings

In Resolution ALJ 176-3349 dated January 15, 2015, the Commission preliminary categorized this application as ratesetting, and preliminary determined that hearings were not necessary. On February 13, 2015, SED filed a protest to the application. Toly and SED resolved all issues raised in the SED protest and on July 13, 2015, the parties filed a joint motion for adoption of their

settlement agreement. No other protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

14. Waiver of Comment Period

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

15. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Gerald F. Kelly is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of Application 15-01-006 appeared on the Daily Calendar on January 14, 2015.
2. Toly is a telephone corporation and public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).
3. Toly acknowledges failure to report to the Commission that it entered into a Consent Decree with the FCC and made a voluntary contribution to the United States Treasury.
4. Toly and the SED, the only parties in this proceeding, negotiated and reached settlement of contested issues. A Joint Motion for approval of a Settlement Agreement was filed on July 13, 2015.
5. The Settlement Agreement between Toly and SED complies with Rule 12.1(d) and is: (1) reasonable in light of the record; (2) consistent with the law; and (3) in the public interest. The Settlement Agreement conveys sufficient

information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

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

7. The Commission is the Lead Agency for purposes of this application under CEQA.

8. Since Toly does not intend to construct any facilities, granting the application to provide resold interexchange service will not have an adverse impact upon the environment.

9. Toly has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

10. Toly's management possesses sufficient experience, knowledge, and technical expertise to provide telecommunications services to the public.

11. Toly provided as Attachment C in its response to the assigned ALJ's ruling issued on July 13, 2015, a map showing its proposed service territory.

12. Toly provided an estimate of its customer base for the first and fifth year of operation.

13. From July 1, 2014 through the date of the Settlement Agreement, Toly was reselling services to Cal Ore at wholesale rates and as such was not obligated to collect and remit surcharges during this period.

14. Toly has no past due surcharges payable to the Commission.

15. For the period ending December 31, 2014, Toly owes \$100 plus \$25 interest for past due user fees to the Commission.

16. Pursuant to Rule 11.4, Toly filed three motions for leave to file confidential materials under seal.

Conclusions of Law

1. Toly should be granted a CPCN to provide resold interexchange telecommunications service in California, subject to the terms and conditions of the Settlement Agreement set forth in Attachment D.
2. Toly is required to obtain a continuous performance bond in the amount of \$25,000 pursuant to D.13-05-035.
3. Nothing in the Settlement Agreement contravenes any statute or Commission decision or rule.
4. The benefits to the public of the Settlement Agreement outweigh the benefits of continued litigation.
5. With the filing of the Settlement Agreement, this proceeding is an uncontested matter. In approving the Settlement Agreement, this decision grants the relief requested.
6. The penalty level of the Settlement Agreement is reasonable given the totality of the circumstances.
7. The Settlement Agreement should be approved.
8. Toly should be required to pay past due user fees.
9. Hearings are not necessary in this proceeding.
10. Toly should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
11. Toly's motion to file under seal its Exhibit 5B to its May 21, 2015 response should be granted for a period of three years.
12. Toly's motion to file under seal Attachments A and B to its June 15, 2015 response should be granted for a period of three years.
13. Toly's motion to file under seal Attachments A and B to its July 17, 2015 response should be granted for a period of three years.

O R D E R**IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to Toly Digital Networks, Inc., to provide resold interexchange telecommunications services in California, subject to the terms and conditions of this decision.

2. The July 13, 2015 Joint Motion by Toly Digital Networks 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 D to this decision, is approved.

3. Pursuant to the terms of the Settlement Agreement, as set forth in Attachment D, Toly Digital Networks, Inc. (Toly) shall make a payment of (a) \$2,000 no later than 30 calendar days from the effective date of this decision, and (b) four payment of \$1,000 each thereafter every 60 days for a total penalty payments of \$6,000. Each designated payment shall be made 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, CA 94102. Toly shall write on the face of the check or money order "For deposit to the General Fund per Decision 15-XX-XXX."

4. Toly Digital Networks, Inc. shall pay past due user fees in the amount of \$100 plus \$25 interest for a total of \$125 within 30 days of the issuance of this decision. Payment shall be made 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, CA 94102. The check or

money order shall include the statement "Toly's 2014 user fee with interest - For deposit to the Commission program budgets per Decision 15-XX-XXX."

5. The corporate identification number assigned to Toly Digital Networks Inc., (U-7290-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.

6. The license granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

7. Toly Digital Networks, Inc. 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, Toly Digital Networks, Inc. must submit a Tier-1 advice letter to the Director of the Communications Division, 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.

8. Toly Digital Networks, Inc. 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.

9. In addition to all the requirements applicable to interexchange carriers included in this decision, Toly Digital Networks, Inc. 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.

10. Toly Digital Networks, Inc. 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.

11. Toly Digital Networks, Inc. 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. Applicant must pay a minimum user fee of \$100 or 0.18% of gross intrastate revenue, whichever is greater. Under Pub. Util. Code § 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.

12. Prior to initiating service, Toly Digital Networks, Inc., 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.

13. Prior to initiating service, Toly Digital Networks, Inc. must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information

Update Request” found at <http://www.cpuc.ca.gov/PUC/telco/>. This information must be updated if the name or telephone number changes, or at least annually.

14. Toly Digital Networks, Inc. must notify the Director of the Communications Division in writing of the date that interexchange service is first rendered to the public pursuant to the authority granted herein, no later than five days after service first begins.

15. Toly Digital Networks, Inc. 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 C.

16. Toly Digital Networks, Inc. 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 B to this decision.

17. The motions of Toly Digital Networks, Inc. (Toly) to file under seal its Exhibit 5B and Attachments A and B(dated June 15, 2015 and July 17, 2015) are granted for a period of three years after the date of this order. During this three-year period, the information in Exhibit 5B and Attachments A and B shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Toly believes that it is necessary for this information to remain under seal for longer than three years, Toly may file a new motion showing good cause for extending this order by no later than 30 days before expiration of this order.

18. Application 15-01-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

ATTACHMENT A

REQUIREMENTS APPLICABLE TO INTEREXCHANGE CARRIERS

1. Applicant must file, in this docket with reference to this decision number,¹ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879);
- b. The California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88, App. B, Rule 8.G).
- g. The User Fee provided in Pub. Util. Code §§ 431-435. The minimum annual User Fee is \$100, as set forth in D.13-05-035.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the

¹ Written acceptance filed in this docket does not reopen the proceeding.

current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at

<http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Surcharge+Remittance.htm>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

3. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

5. Applicant must file a service area map as part of its initial tariff.

6. Prior to initiating service, Applicant 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.

7. In addition, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the

“Regulatory/Official Contact Information Update Request” found at <http://www.cpuc.ca.gov/PUC/telco/>. This information must be updated if the name or telephone number changes, or at least annually.

8. Applicant 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.

9. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.

10. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. In the event Applicant’s books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission’s offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

12. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

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

14. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

15. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

16. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

17. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure

18. Applicant is exempt from Pub. Util. Code §§ 816-830.

19. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

20. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.

21. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT A)

ATTACHMENT B

ATTACHMENT B**ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
 7. Date operations were begun.
 8. Description of other business activities in which the utility is engaged.
 9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
 10. Balance sheet as of December 31st of the year for which information is submitted.

11. Income statement for California operations for the calendar year for which information is submitted.
12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT B)

ATTACHMENT C

ATTACHMENT C**CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT C)

ATTACHMENT D