

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Communications Division  
Carrier Oversight & Programs Branch**

**RESOLUTION T-17510  
May 12 , 2016**

**R E S O L U T I O N**

**Resolution T-17510. This Resolution Imposes Fines and Revokes Operating Licenses of 28 Wireless Telephone Carriers for Failing to Comply with the CPUC User Fee, Public Purpose Program Surcharge and Performance Bond Requirements.**

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**SUMMARY**

This Resolution fines 28 wireless (cellular) telephone corporations (also known as telephone carriers or carriers) in the amount of \$1,000, up to a maximum of \$3,000, against each of these carriers for failing to comply with one or more the following California Public Utilities Commission (Commission or CPUC) regulatory requirements: a) reporting and remittance of California Public Utilities Reimbursement Account Fee (User Fees); b) reporting and remittance of public purpose programs (PPP) surcharges; and c) submission of a performance bond. A list of these carriers is attached to this Resolution. If a carrier's fine is not paid within 90 days from the effective date of this Resolution, the carrier's WIR will be revoked and the carrier will no longer be authorized to operate in California.

**BACKGROUND**

Wireless telephone carriers holding a Wireless Identification Registration (WIR) must comply with all federal and state statutes, rules, and regulations.<sup>1</sup> These requirements include timely reporting and remitting of User Fees and PPP surcharges, and posting a performance bond with the Commission.

In Decision (D.) 94-10-031, as modified by D.13-05-035, the Commission established a wireless registration process for Commercial Mobile Radiotelephone Service (CMRS) providers seeking authority to operate in California. The Commission also adopted regulatory compliance requirements for the carriers to remit User Fees, PPP surcharges, and post a performance bond. D.13-05-035 also authorized the Communications Division (CD) to prepare a resolution revoking the WIR of any wireless registrant that is late in submitting a performance bond to CD. The 28 wireless carriers in this Resolution have failed to comply with one or more of these regulatory requirements as discussed below.

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<sup>1</sup> See D.13-05-035, Attachment E, Sworn Affidavit for Wireless Registrant.

### **A. Utility Reimbursement Account Fee (User Fees)**

PU Code §§ 401 through 405 require telephone carriers to report their California intrastate revenues and remit the corresponding amount of User Fees to the CPUC. User Fees are determined by multiplying the carrier's intrastate revenues by a fee factor, which is currently set at 0.23%.<sup>2</sup> Revenues that are subject to User Fees include all intrastate customer revenues from telecommunications services minus uncollectable revenue. Revenues from the following telecommunications services are exempt from User Fees: a) directory advertising and sales; b) one-way paging; c) terminal equipment sales; and d) inter-carrier sales.

The Commission requires carriers with gross intrastate customer revenues of less than \$750,000 to file annually, and with revenues in excess of \$750,000 to file quarterly. In D.13-05-035, the Commission established that carriers must remit a minimum of \$100 in User Fees even if their reportable User Fees equals less than \$100, or intrastate revenue is zero.<sup>3</sup> If a carrier is in default of the reporting or payment of User Fees for more than 30 days, the CPUC may suspend or revoke its operating authority under PU Code § 405.

### **B. Public Purpose Program Surcharges**

Telephone corporations and Voice over Internet Protocol (VoIP) service providers are required to collect and remit PPP surcharges to the CPUC pursuant to P.U. Code §§ 270, 275-281, 285, 739.3, and 879, to fund universal service programs that the Commission administers and oversees. In D. 84-05-053, D. 94-09-065, and D. 96-10-066, the Commission established a surcharge funding mechanism to fund these programs. The mechanism requires telephone carriers including VoIP service providers to assess a surcharge on revenues collected from end-users for intrastate telecommunications service subject to surcharge. Telephone carriers that are 90 days or more in arrears of reporting and remitting surcharges may be subject to suspension or revocation of their authority to operate in California.<sup>4</sup>

### **C. Performance Bond**

In D. 10-09-017, the Commission required registration license holders<sup>5</sup> to obtain a continuous performance bond equal to or greater than ten percent of their intrastate

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<sup>2</sup> Commission Resolution M-4828 increased the Public Utilities Commission Utilities Reimbursement Account (PUCURA) from 0.18% to 0.23% of reported intrastate revenue for telephone and telegraph corporations, effective January 1, 2016.

<sup>3</sup> D. 13-05-035, OP 21; Prior to D.13-05-035, all carriers were required to file an annual User Fee of 0.18% of intrastate revenue or \$100, whichever is greater, but were not required to pay the minimum \$100 if the carrier had no intrastate revenue to report.

<sup>4</sup> D. 93-05-010.

<sup>5</sup> A "registration license holder," "registration licensee" or "registrant" is an entity that obtained or obtains interexchange authority pursuant to PU Code § 1013 through the

revenues reported on the Commission's User Fees Statement during the preceding calendar year or \$25,000, whichever is greater. The performance bond must be issued by a corporate surety company that is authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. In Ordering Paragraph (O.P.) 26 of D.10-09-017, the Commission authorized CD to prepare a resolution revoking the registration license of any license holder that is more than 120 days late in providing CD's Director with a copy of its executed performance bond.

In D. 13-05-035, the Commission continued to require all applicants seeking or holding a CPCN and wireless carriers seeking or holding a WIR to post a bond to facilitate the collection of fines, fees, surcharges, taxes, penalties, and restitution. The Commission set the initial bond amount for new and existing CPCN holders and wireless registrants at \$25,000 and exempted some carriers from this requirement: <sup>6</sup>

#### **D. Penalties Under PU Code § 2107**

PU Code § 2107 allows the Commission to impose penalties on carriers that violate the Commission's rules as follows:

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 been otherwise 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.

All wireless carriers in this Resolution have failed to comply with one or more the Commission's regulatory requirements.

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simplified registration process established by D.97-06-107 that does not hold interexchange authority pursuant to PU Code § 1001.

<sup>6</sup> D.13-03-035, OP 5 states: "Carriers of Last Resort (COLRs) including Uniform Regulatory Framework incumbent local exchange carriers, General Rate Case incumbent local exchange carriers, and their wholly-owned or majority owned (51% or more) affiliates or subsidiaries of their corporate parent or holding company, as well as Cox Communications where it serves as a COLR, are exempt from the requirement to obtain a performance bond."

## **DISCUSSION**

### **A. User Fees**

CD annually notifies and reminds carriers of the CPUC User Fee requirement. CD notified all 28 wireless carriers in this Resolution, and 27 have failed to report and remit User Fees.

### **B. Public Purpose Program Surcharges**

CD notified all wireless carriers on several occasions regarding the PPP surcharge reporting and remittance requirement and undertook the following steps to notify them:

1. Beginning mid-2013 through mid-2015, CD staff identified and contacted active carriers that failed to report and remit surcharge revenues. Upon being contacted, a number of carriers began to report and pay surcharges accordingly. CD staff then continued to periodically review the Telecommunications and User Fees Filing System (TUFFS) database to identify carriers for continual compliance, and sent corresponding notice letters via U.S. mail and e-mail to the carriers that failed to comply with the surcharge requirement. CD staff also sent follow-up notices to these carriers.
2. The first round of mailings to non-compliant carriers occurred during July, 2013. CD staff continued to monitor these carriers, and followed up with this group during February, 2014.
3. A second round of mailings to non-compliant carriers occurred during August, 2014. CD staff continued to monitor these carriers and followed up with this group during September 2014.
4. The third round of mailings to non-compliant carriers occurred during April, 2015. CD staff continued to monitor these carriers and followed up with this group during June, 2015.

All 28 wireless carriers have failed to report intrastate revenues and pay the PPP surcharges for at least twelve (12) consecutive months as of August, 2015.

### **C. Performance Bond**

CD monitors carriers to ensure that they have satisfied the CPUC performance bond requirement. CD staff undertook the following steps to notify the carriers of their non-compliance:

1. Mailed notices to carriers in October 2014, March 2015 and February 2016 concerning the performance bond requirement.
2. Identified and prepared a list of carriers that were delinquent in submitting bonds.

Twenty-three (23) of the 28 wireless carriers failed to comply with the performance bond requirement.

#### **D. Fines**

Since all of the wireless carriers in this Resolution have failed to comply with one or more of CPUC regulatory requirements despite receiving repeated notices from CD, we find it reasonable to fine each of these carriers in the amount of \$1,000 for their violations.

We direct each of these carriers to pay a fine in the amount of \$1,000 within thirty (30) days from the effective date of this Resolution. If the carrier fails to pay the fine within 30 days, the fine will increase by an additional \$1,000 for every month thereafter, up to a maximum fine of \$3,000. If the fine is not paid within 90 days from the effective date of this Resolution, the carrier's WIR will be revoked and the carrier will no longer be authorized to operate in California.

A list of the 28 carriers is attached to this Resolution (*See Appendix A*) in ascending U-number order and identifies the violations incurred for each of the carriers.

Table 1 below summarizes the number of non-compliant carriers by each utility type or line of business.

**Table 1**

<b>Summary of Non-Compliant Carriers</b>	
<b>Utility Type / Line of Business</b>	<b>No. of Carriers</b>
Cellular Carrier (CEC)	1
Cellular Retail Seller (CER)	27
<b>TOTAL</b>	<b>28</b>

"CEC" refers to a wireless telephone carrier that owns transmission facilities and is licensed by the Federal Communications Commission (FCC). "CERs" refer to wireless telephone carriers that do not have their own transmission facilities. They obtain communications services from another wireless carrier for resale to the public for profit.

In summary:

- All 28 wireless carriers in this Resolution have failed to report and remit PPP surcharges;

- Twenty-three (23) carriers failed to report and remit User Fees and PPP surcharges, and submit a performance bond;
- Four (4) carriers failed to report and remit User Fees and PPP surcharges; and
- One (1) carrier failed to report and remit surcharges only.

#### **E. Suspension of Participation in Public Purpose Programs**

The wireless carriers listed in this Resolution are not eligible to receive subsidy or draw from the CPUC's PPP funds because they have failed to comply with the CPUC regulatory requirements. These carriers shall not be eligible to receive subsidy or draw from the PPP funds until they pay the fines and remit all overdue/accrued surcharge revenues and User Fees. Since the CPUC universal service programs are funded by PPP surcharge revenues, no carrier in violation of the CPUC regulatory requirements should benefit from these programs until they become compliant.

#### **CONCLUSION**

We find that CD staff employed proper and reasonable measures to locate, inform and remind the 28 wireless carriers listed in Appendix A to this Resolution of the CPUC User Fees, PPP surcharge and performance bond requirements. CD provided ample time and opportunity for them to come into compliance, but they have failed to do so. Thus, we find it reasonable to apply sanctions against each of the 28 wireless carriers. We impose \$1,000 fine against each of the 28 carriers, which is due within thirty (30) days from the effective date of this Resolution to the State of California's General Fund.

If a carrier continues to be in default beyond 30 days after the effective date of this Resolution date, the fine will increase by an additional \$1,000 for every month thereafter up to a maximum \$3,000, consistent with PU Code § 2107. If the fines are not paid within 90 days from the effective date of this Resolution, the carrier's operating authority will be revoked.

To reinstate the operating authority, the carrier will be required to apply for a new WIR, and pay all accrued User Fees, PPP surcharges, and associated fines and penalties owed, and post a performance bond with the Commission.

#### **COMMENTS ON THE DRAFT RESOLUTION**

In compliance with PU Code § 311 (g), a Notice of Availability was e-mailed on March 8, 2016 to all telephone carriers informing these parties that the draft of this Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comments. In addition, CD informed these parties that the subsequent conformed Resolution, when adopted by the Commission, will be available at the same Commission's website.

A list of the wireless carriers was also noticed in the in the CPUC's Daily Calendar for 30 days. Interested parties were invited to contact CD staff with questions or submit written comments on this Resolution. The Commission received no formal comments.

However, during the comment period, CD staff received communications from one (1) carrier who then completed the necessary requirements to achieve compliance. This carrier has been removed from the decertification list. Another carrier contacted CD staff to voluntarily surrender wireless registration. Staff then instructed the carrier to pay past-due user fees, and submit an advice letter attesting to the fact that it had no intrastate revenue to report for surcharge payment during the span of its registration period, while voluntarily surrendering its registration to operate in California. This carrier submitted the past-due user fees that it owed and the requested advice letter, and has been removed from the decertification list, having achieved compliance. Therefore, twenty-eight carriers have been listed for decertification in this resolution.

## **FINDINGS AND CONCLUSIONS**

1. All 28 wireless telephone corporations (also known as telephone carriers or carriers) listed in Appendix A of this Resolution received, at various times, a Wireless Identification Registration (WIR) from the Commission to operate in California.
2. D.94-10-031, as modified by D.13-05-035, established a WIR process for cellular or Commercial Radiotelephone Service (CMRS) providers seeking authority to operate in California.
3. D.94-10-031 and D.13-05-035 require WIR holders to report and remit CPUC User Fees, Public Purpose Program (PPP) surcharges, and post a performance bond.
4. D.13-05-035 authorized Communications Division (CD) to prepare a resolution revoking the WIR of any wireless registrant that is late in submitting a performance bond.
5. Public Utilities (PU) Code §§ 401 through 405 require telephone carriers to annually or quarterly report their California intrastate revenues and remit corresponding CPUC Utilities Reimbursement Account Fees (User Fees).
6. In Decision (D). 13-05-035, the Commission set a minimum User Fee amount of \$100 for all telephone corporations holding a CPCN or a WIR to be paid annually, even if the telephone corporation reports zero intrastate revenue.

7. PU Code §§ 270, 275-281, 285, 739.3, and 879 authorize the Commission to collect surcharge revenues to fund the CPUC public purpose programs (PPPs).
8. In D. 84-05-053, D. 94-09-065, and D. 09-10-066, the Commission established a surcharge funding mechanism to fund the PPPs.
9. Telephone carriers are required to assess and remit surcharge revenues collected from end-users for intrastate telephone service subject to surcharge.
10. PU Code § 285 requires Voice over Internet Protocol (VoIP) Service providers to assess and remit surcharge revenues to the CPUC to fund the PPPs.
11. The Commission may suspend or revoke operating authority of telephone carriers that are 90 days or more in arrears on reporting and remitting surcharges, per D.93-05-010.
12. D. 10-09-017 requires registration license holders to submit a continuous performance bond.
13. The Commission in D.10-09-017 directed the Communications Division (CD) to pursue license revocations of telephone carriers that fail to submit the required performance bond.
14. D.13-05-035 requires all applicants seeking or holding a CPCN or a WIR to post a performance bond.
15. PU Code § 2107 states that any public utility which fails or neglects to comply with any part or provision of any Commission order, decision, decree, rule, direction, demand, or requirement is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense, as indicated in.
16. The 28 wireless carriers listed in Appendix A have not complied with one or more of the following Commission requirements: a) report and remit User Fees; b) report and remit surcharge revenues; and c) submit a performance bond.
17. To the extent that any of the listed cellular carriers participates in or draws from the CPUC PPPs, such carriers shall be not eligible to receive funds from the PPPs until their respective violations have been remedied.
18. CD undertook proper and reasonable measures to locate, inform and remind the 28 telephone carriers listed in Appendix A of the CPUC User Fee, surcharge and performance bond requirements.

19. We find it reasonable to impose a \$1,000 fine, against each of the 28 wireless carriers listed in Appendix A because they have failed to comply with the CPUC regulatory requirements. Fines shall be paid within 30 days from the effective date of this Resolution. If the fines are not paid within 30 days, the amount will increase by an additional \$1,000 for every month thereafter, up to a maximum of \$3,000. If the fines are not paid within 90 days, the WIRs will be revoked.
20. If a carrier's WIR is revoked, the wireless carrier shall apply for a new WIR and pay all accrued User Fees, public purpose program surcharges, and associated fines and penalties owed, post a performance bond with the Commission in order to operate again in California.
21. The Commission e-mailed a Notice of Availability on March 8, 2016 to all telephone carriers informing these parties that the draft of this Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comments. CD informed these parties of the subsequent availability of the conformed Resolution, when adopted by the Commission, at the same Commission's website.
22. Names of the 28 carriers were posted in the CPUC's Daily Calendar for 30 days.

**THEREFORE, IT IS ORDERED** that:

1. The Commission imposes a \$1,000 fine against each of the 28 wireless telephone corporations listed in Appendix A for failing to comply with the California Public Utilities Commission's User Fee, public purpose program surcharges, and performance bond requirements.
2. Fines shall be paid within 30 calendar days from the effective of the date of this Resolution, by a 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, CA 94102. The wireless telephone corporation's representative shall write on the face of the check or money order "For deposit to the State of California General Fund, per Resolution T-17510."
3. If the fines are not paid within 30 calendar days from the effective date of the Resolution, the fine shall increase by an additional \$1,000 for every month thereafter, up to a maximum of \$3,000 fine. If the fines are not paid within 90 days from the effective date of this Resolution, the wireless telephone corporation's WIR will be revoked.
4. If any of the 28 wireless telephone corporations listed in Appendix A participates in or draws subsidy from the California Public Utilities Commission's public

purpose programs, the wireless telephone corporation shall be no longer be eligible to participate or receive funds from any of these programs until the carrier's respective violations have been remedied.

5. If any of the 28 wireless telephone corporations listed in Appendix wishes to operate in California again, the carrier shall apply for a new WIR and pay all accrued User Fees, public purpose program surcharges, and associated fines and penalties owed, and post a performance bond with the Commission.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 12, 2016. The following Commissioners approved it:

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TIMOTHY J. SULLIVAN  
Executive Director

## **Appendix A**

**Appendix A (in U-number order)**

#	UTILITY TYPE	UTILITY NAME	U-number	Performance Bond	Surcharges	User Fees
1	CEC	California Valley Broadband, LLC	U-3087-C	x	x	x
2	CER	North American Cellular Telephone	U-4012-C	x	x	x
3	CER	Cellular Systems Int'l Ltd.	U-4067-C	x	x	x
4	CER	Digital Cellular Inc.	U-4087-C	x	x	x
5	CER	Body Wise Communications Advantage	U-4228-C	x	x	x
6	CER	Movida Communications, Inc.	U-4348-C	x	x	x
7	CER	Helio, LLC	U-4351-C	x	x	x
8	CER	Treyspan, Inc.	U-4355-C	x	x	x
9	CER	Affinity Mobile, LLC	U-4369-C	x	x	x
10	CER	Lightyear Network Solutions, LLC	U-4383-C	x	x	x
11	CER	Airpeak Communications	U-4384-C	x	x	x
12	CER	Atrium Wireless Partners, LLC	U-4385-C	x	x	x
13	CER	St Messaging, LLC	U-4389-C	x	x	x
14	CER	Conexions, LLC	U-4390-C	x	x	x
15	CER	Telava Mobile, Inc.	U-4393-C	x	x	x
16	CER	Ernest Communications, Inc	U-4394-C	x	x	x
17	CER	Mother Lode Internet, LLC	U-4401-C	x	x	x
18	CER	PrepaYd Wireless, Inc.	U-4420-C	x	x	x
19	CER	Midwestern Telecommunications, Inc.	U-4421-C	x	x	x
20	CER	EZ Reach Mobile, LLC	U-4424-C		x	x
21	CER	Ciao Telecom, Inc.	U-4427-C	x	x	x
22	CER	Wall Street Network Solutions, LL	U-4428-C		x	x
23	CER	Lycamobile USA Inc.	U-4430-C	x	x	x
24	CER	Clear Choice PCS, LLC	U-4435-C	x	x	x
25	CER	BCN Telecom, Inc.	U-4455-C	x	x	x
26	CER	Tempo Telecom, LLC	U-4459-C		x	
27	CER	EcoMobile, Inc.	U-4477-C		x	x
28	CER	Clowers Communications, Inc.	U-4486-C		x	x

**End of Appendix A**