Decision 16-09-048 September 29, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the operations, practices, and conduct of T C Telephone LLC, doing business as Horizon Cellular, (T C Telephone) (U6875C) and (U4410C), to determine whether T C Telephone violated the laws, rules and regulations governing the manner in which California consumers are switched from one carrier to another and billed for telephone services.	Investigation 16-01-012 (Filed January 28, 2016)

DECISION APPROVING SETTLEMENT OF T C TELEPHONE LLC AND CONSUMER PROTECTION AND ENFORCEMENT DIVISION

Summary

This decision approves the settlement agreement between the Consumer Protection and Enforcement Division of the California Public Utilities Commission and T C Telephone LLC, doing business as Horizon Cellular (T C Telephone). The settlement agreement resolves all outstanding issues in this Investigation concerning T C Telephone. T C Telephone was investigated for violations of Public Utilities Code Section 2889.5 for switching consumers' telephone service provider without obtaining Third-Party Verification of the consumers' consent and without informing the consumers of the nature and extent of the services being offered. The investigation also included

T C Telephone's operation under the name Horizon Cellular without notification to the Commission as required by General Order 96-B. The settlement agreement further provides that T C Telephone shall pay a $200,000 penalty.

This decision finds the settlement will serve as an effective deterrent to further offenses and is reasonable in light of the entire record, consistent with law, and in the public interest.

1. Jurisdiction

Rule 5.1 of the Commission's Rules of Practice and Procedure[1] (Rules) authorizes the Commission to institute an investigation on its own motion. On January 28, 2016, the Commission filed this Order Instituting Investigation (OII). T C Telephone LLC (T C Telephone) was investigated for violations of Public Utilities Code Section 2889.5 for switching consumers' telephone service provider without obtaining Third-Party Verification of the consumers' consent and without informing the consumers of the nature and extent of the services being offered. The investigation also included T C Telephone's operation under the name Horizon Cellular without notification to the Commission as required by General Order (GO) 96-B. Pursuant to Ordering Paragraph 12 of this investigation, the Commission provided T C Telephone with notice of the order instituting investigation on or about February 4, 2016.

2. Background and Procedural History

T C Telephone is a telephone company based in California with its principal place of business located at 243 Washington Street, Red Bluff, CA 96080.

[1] California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

On July 8, 2004, the Commission granted T C Telephone a Certificate of Public Convenience and Necessity (U6875C) to provide limited facilities-based and resold local exchange services as a Competitive Local Exchange Carrier (CLEC), and limited facilities-based and resold, long distance (interexchange) services as a non-dominant interexchange carrier.

T C Telephone was designated as a wireline "Eligible Telecommunications Carrier" on October 29, 2009, and currently offers California LifeLine wireline services under CLEC Utility Identification Number U6875C.

On April 15, 2011, the Commission approved a wireless registration application by T C Telephone and assigned corporate ID number U4410C to T C Telephone to provide resold wireless services as a commercial mobile radio or wireless service provider.

On January 1, 2013, T C Telephone notified its customers that it would begin providing service under the name Horizon Cellular. T C Telephone did not notify the Commission it was doing business as Horizon Cellular at the time it began marketing under that name in 2013.

The Commission's Consumer Affairs Branch (CAB) received complaints regarding Horizon Cellular in 2013. Among the complaints was a contact from an employee of the St. Francis Manor Apartments, a residence for senior citizens located in Sacramento, California, who called the CAB Fraud Hotline to complain that some of its residents were receiving sales pitches from a company called Horizon, offering free phone service.

When CAB began to receive these consumer complaints about a company named Horizon Cellular in 2013, CAB was initially unable to identify Horizon Cellular as T C Telephone because the Commission's database did not have the proper information. According to GO 96-B, *Telecommunications Industry Rule 9* –

Notification of DBAs, if a utility does business under a name other than the name under which the Commission granted operating authority, the utility must list, as part of its preliminary statement, each name under which it does business and it must update this list, as necessary, by filing an advice letter. The Commission's Communications Division subsequently notified T C Telephone to comply with the notification requirement.

In response to the Communications Division's request, T C Telephone filed Advice Letters #28 and #29 in November 2013 for its landline and wireless telephone services, respectively, to list Horizon Cellular with the Commission as a name under which T C Telephone is doing business.

In 2014, T C Telephone was unable to provide the Commission's Safety and Enforcement Division (SED, predecessor to Consumer Protection and Enforcement Division (CPED)) staff with Third-Party Verification (or TPV) Tapes for 12 consumers – including residents of the St. Francis Manor Apartments in Sacramento – who complained to the Commission's CAB that their phone services were switched without their consent. SED staff issued slamming citations totaling $12,000 for violations of Public Utilities Code Section 2889.5(a)(3). T C Telephone paid the citations.

On September 10, 2014, T C Telephone dba Horizon Cellular filed Advice Letter #32, seeking authority to offer California LifeLine wireless services under U4410C, consistent with Decision (D.) 14-01-036. The application was withdrawn on March 15, 2016 during the pendency of this proceeding.

On February 4, 2016, the Commission issued this OII, Investigation (I.) 16-01-012 alleging that T C Telephone failed to obtain Third-Party Verifications for its newly acquired customers and failed to notify the Commission it was doing business as Horizon Cellular. Public Utilities Code

Section 2889.5(a)(3) requires a telephone corporation to obtain confirmation by an independent Third-Party Verification company of a subscriber's decision to change service providers and Public Utilities Code Section 2889.5(a)(3)(C) requires that an independent Third-Party Verification company shall record that verification.

T C Telephone alleges that it did not begin utilizing the name Horizon Cellular until June 2013. T C Telephone also alleges that the majority of the newly added customers in 2013 were as a result of incoming sales calls, not outbound, and therefore that the Third-Party Verification requirement does not apply to those customers. Public Utilities Code Section 2889.5(a)(3)(D) provides, "a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers." T C Telephone states that it has cooperated with staff's data requests and has taken action to correct violations and remedy wrongs and to ensure ongoing compliance.

T C Telephone further alleged by its response that it had engaged a call center to process sales calls and the call center had been instructed to record third-party verifications for outbound sales calls. Once T C Telephone learned of the complaints to CAB, T C Telephone terminated its relationship with the call center and discontinued outbound sales calls. Furthermore, T C Telephone alleges it sought to resolve each of the complaints received by CAB by providing refunds, apologies, gift cards, and restoring service to the original carrier if requested. Since that time, T C Telephone has dramatically reduced the number of complaints, has adopted a "zero tolerance" policy concerning misrepresentation to customers, and seeks to promptly and effectively resolve all complaints.

3. The Settlement Agreement

The Consumer Protection and Enforcement Division of the California Public Utilities Commission and T C Telephone LLC, doing business as, Horizon Cellular (collectively, the "Parties") filed their *Joint Motion for Approval of Settlement Agreement* on June 24, 2016. A *Joint Statement in Support of the Settlement Agreement* was filed by the parties on July 14, 2016. The proposed Settlement Agreement (Agreement) is attached as Appendix A. The Agreement resolves all issues before this Commission of I.16-01-012.

The Agreement provides:

I. Joint Statement of the Case

> A joint factual statement of the case including an acknowledgment of T C Telephone of the applicability of the law and the seriousness of the concerns raised by CPED [set forth in section 2, hereinabove].

II. Agreement

A. Acknowledgment

> T C Telephone acknowledges that GO 96-B requires telephone companies to notify the Commission of other names under which the telephone company does business, and that T C Telephone failed to do so. T C Telephone further acknowledges that Public Utilities Code Section 2889.5(a)(2) requires a telephone corporation to obtain confirmation of the subscriber's decision to change service providers by an independent Third Party Verification (TPV) company, and Section 2889.5(a)(3)(C) requires that the independent TPV company shall record that verification, and that in certain instances T C Telephone alleges that one particular independent marketing company that performed services for TC Telephone failed to do so or failed to retain such recordings.

> Subject to T C Telephone's ongoing compliance with this Agreement and all applicable laws, and Commission rules, regulations, decisions, and orders, T C Telephone and CPED acknowledge that all issues raised in I.16-01-012 will have been fully resolved, and that CPED does not oppose the Commission's granting of T C Telephone dba Horizon Cellular's Advice Letter under U4410C, seeking authority to offer California LifeLine wireless services, when it is re-filed.
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> B. Penalty Payments
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> In order to resolve the legal issues raised by the OII, T C Telephone will pay a $200,000 penalty to the State of California General Fund. T C Telephone will pay $8,333.33 within five (5) days after the calendar date of the Commission's approval of this Agreement. T C Telephone will pay the remaining $191,666.67 penalty in twenty-three (23) equal monthly installments beginning thirty (30) days after the first payment of $8,333.33 is made.
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> III. General Provisions
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> The agreement represents a full and final resolution of I.16-01-012.

The Parties contend the agreement resolves all of the issues of the OII and that the proposed settlement is reasonable in light of the entire record, consistent with law and precedent, and in the public interest.

4. Discussion

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 law. As set forth below, the Agreement satisfies these criteria. Accordingly, we adopt the Agreement and close these proceedings.

a. Standard for Review of Settlements

Rule 12.1(d) provides: "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

i. The Proposed Settlement is Reasonable in Light of the Record

The Parties have agreed to an undisputed set of facts which is set forth in the Settlement Agreement. The Settlement Agreement resolves the issues in a reasonable manner in light of the record.

ii. The Proposed Settlement is Consistent with the Law and Precedent

T C Telephone acknowledges that Public Utilities Code Section 2889.5 applies to it, as well as Commission GO 96-B, and that T C Telephone did not promptly notify the Commission it was doing business as Horizon Cellular and did not always obtain third-party verifications in compliance with Section 2889.5. T C Telephone commits to full compliance with those provisions. T C Telephone further agrees to make payments totaling $200,000 to the State's General Fund as a result of its acknowledgements. Therefore, the Settlement Agreement is consistent with and enforces applicable law.

iii. The Proposed Settlement is in the Public Interest

The Settlement Agreement is consistent with the Commission's well-established policy of supporting the resolution of disputed matters through settlement, reflects a reasonable compromise between the Settling Parties' positions, and will avoid the time, expense and uncertainty of evidentiary hearings and further litigation. Furthermore, the parties have confirmed the settlement is not contingent on the Commission granting T C Telephone any additional operating authority. Accordingly, the Settlement Agreement is in the

public interest and should be adopted by the Commission without material change.

iv. The Penalty is Reasonable and Proportionate to the Violation

The OII, I.16-01-012, at Ordering Paragraph 3, inquires whether T C Telephone

> a. … should be ordered to disgorge all profits obtained illegally, and pay reparations, restitution, and/or refunds, pursuant to PU Code Sections 701 and 734, to California consumers in the total amount collected from them, where consumers had not knowingly authorized the services or the amounts charged;
>
> b. … should be fined pursuant to PU Code Sections 2107 and 2108 for the above-described violations of the applicable statutes, orders, decisions, rules, directions, demands and requirements of this Commission …

T C Telephone acknowledges that Public Utilities Code Section 2889.5 applies to it, as well as Commission GO 96-B, and that T C Telephone did not promptly notify the Commission it was doing business as Horizon Cellular and did not always obtain third-party verifications in compliance with Section 2889.5. T C Telephone commits to full compliance with those provisions. The parties also note however, that the applicability of T C Telephone's claimed defense under Public Utilities Code Section 2889.5(a)(3)(D) providing "a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers" was not resolved due to the settlement. Furthermore, the Parties are aware of no Commission decision that specifically applies to the issue of failing to report "doing business as" company names as required by GO 96B.

Despite these unresolved questions concerning T C Telephone's alleged violations of law the parties reached a compromise providing for the payment of a $200,000 penalty.

A monetary penalty is authorized by Public Utilities Code Section 2107:

> Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than fifty thousand dollars ($50,000) for each offense.

T C Telephone has agreed to pay $200,000 to the general fund as a term of the Settlement. Approval of the Agreement requires the Commission determine this payment is reasonable. When the Commission imposes a monetary fine under Section 2107 it uses principles identified by D.98-12-075 to assess whether the amount is appropriate.[2] As we have explained:

> The Commission has considerable discretion, once it has established a violation, to weigh competing factors and select a point within that range. . . .[3]

Notably,

> The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others. For this reason, fines are paid to the State of California, rather than to victims.[4]

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[2] 84 CPUC2d at 182-184.

[3] D.03-01-087 at 9-11.

[4] 84 CPUC2d at 182.

When a fine is assessed under Section 2107, two key factors are to be considered to ensure the penalty is an effective deterrence.

> Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result. To capture these ideas, the two general factors used by the Commission when setting fines are: (1) severity of offense and (2) conduct of the utility.[5]

The severity of the offense includes consideration of whether it caused economic harm, physical harm, or harm to the regulatory process. As we have held:

> Many potential penalty cases before the Commission do not involve any harm to consumers but are instead violations of reporting or compliance requirements. In these cases, the harm may not be to consumers but rather to the integrity of the regulatory processes.
>
> Such compliance with Commission directives is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.[6]

Considering the conduct of the utility "recognizes the important role of the public utility's conduct in (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation."[7] "Effective deterrence also

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[5] *Ibid*.

[6] *Id*. at 183.

[7] *Ibid.*

requires that the Commission recognize the financial resources of the utility in setting the fine . . .,"[8] as well as the totality of the circumstances.

> Setting a fine at a level which effectively deters further unlawful conduct by the subject utility and others requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case. The Commission will review facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.[9]

Lastly, the Commission must consider precedent, noting however, "The Commission adjudicates a wide range of cases which involve sanctions, many of which are cases of first impression."[10]

Due to the parties' settlement, the applicability of T C Telephone's claimed defense under Public Utilities Code Section 2889.5(a)(3)(D) providing "a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers" was not resolved. Nor are the parties aware of a Commission decision that specifically applies to the issue of failing to report "doing business as" company names as required by GO 96B. Thus, the appropriate penalty for these disputed violations cannot readily be determined.

Nevertheless, Commission decisions assessing penalties may be instructive. In D.15-04-010, the Commission approved the settlement between the SED and Five9, Inc. Five9, Inc. agreed to pay $172,021 in fines, retroactive

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[8] *Id*. at 184.

[9] *Ibid.*

[10] *Ibid.*

surcharges and user fees, and interest, in settlement of allegations it did not obtain Commission authority prior to offering its services in California.

In D.05-03-004, the Commission approved a settlement between Vycera Communications, Inc. and CPED requiring Vycera to pay a fine of $200,000, with $100,000 of the fine suspended if Vycera successfully completed a probationary period. Similar to this proceeding, CPED alleged that Vycera made unauthorized transfers of telephone service as well as billings for unordered services, and also that Vycera used an automated third-party verification method that failed to produce reliable verification of customers' orders, in violation of Public Utilities Code Section 2889.5.

Other cases that involve more serious allegations, lengthier periods of time, and much larger corporations have resulted in larger fines, but as CPED suggests, those cases are inapposite here. For example, D.15-12-031 approved, after six years of aggressive litigation, a $10,000,000 penalty settlement between CPED and TracFone Wireless, Inc. related to TracFone's collection of public purpose program surcharges and user fees on intrastate revenue since and D.15-09-009 approved a settlement between CPED and Comcast for $25,000,000, relating to the unauthorized disclosure and publication of directory listings.

Based on these criteria, Commission precedent, and a review of these proceedings, we conclude that the $200,000 penalty is reasonable. This penalty is substantial and appropriate in light of T C Telephone's offense and conduct. The penalty has been set at a level which should act as an effective deterrent to T C Telephone and others, but should not impact T C Telephone's ability to continue providing service to its customer base.

b. The Settlement Should Be Approved

For the reasons stated above, the Agreement meets our standard for approving settlements: it resolves all of the issues set forth in the OII, is reasonable in the light of the record, is consistent with the law and precedent, and is in the public interest.

The settling parties have had full opportunity to represent their respective interests and CPED has represented the public interest and maintained the integrity of the Commission's processes. As discussed above, the Agreement is consistent with prior Commission decisions and we are unaware of any conflict with other law. The Agreement's terms detail T C Telephone's penalty and settlement obligations and how it is to discharge them. It resolves all outstanding issues in this Investigation and provides T C Telephone shall pay a $200,000 penalty which is reasonable and proportionate to the offense.

The Parties' request that the Agreement be adopted as a whole and without modification shall be granted. We find the Agreement is in the public interest, will serve as an effective deterrence to further offenses, is reasonable in light of the record as a whole, and is consistent with law. Therefore, we conclude the Parties' motion should be granted and the Agreement should be approved.

5. Categorization and Need for Hearing

The OII categorized this proceeding as adjudicatory and determined that hearings might be required. Hearings have not been held and given the filing of the uncontested settlement, we find that no hearings are needed to resolve this proceeding.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Pursuant to § 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.

7. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Eric Wildgrube is the assigned ALJ.

Findings of Fact

1. On February 4, 2016, the Commission issued this OII, I.16-01-012 alleging that T C Telephone LLC failed to obtain Third-Party Verifications for its newly acquired customers and failed to notify the Commission it was doing business as Horizon Cellular.

2. On January 1, 2013, T C Telephone notified its customers that it would begin providing service under the name Horizon Cellular.

3. T C Telephone did not notify the Commission it was doing business as Horizon Cellular at the time it began marketing under that name in 2013.

4. In 2014, T C Telephone was unable to provide the Commission's SED, predecessor to CPED staff with Third-Party Verification Tapes for 12 consumers who complained to the Commission's CAB that their phone services were switched without their consent.

5. When CAB began to receive these consumer complaints about a company named Horizon Cellular in 2013, CAB was initially unable to identify Horizon Cellular as T C Telephone because the Commission's database did not have the proper information.

6. The Commission's Communications Division subsequently notified T C Telephone to comply with the notification requirement.

7. In response to the Communications Division's request, T C Telephone filed Advice Letters #28 and #29 in November 2013 for its landline and wireless

telephone services, respectively, to list Horizon Cellular with the Commission as a name under which T C Telephone is doing business.

8. T C Telephone and the Commission's CPED (as successor to the SED) have entered into a voluntary settlement to resolve all pending issues.

9. T C Telephone and the Consumer Protection and Enforcement Division are the only parties.

10. T C Telephone acknowledges that GO 96-B requires telephone companies to notify the Commission of other names under which the telephone company does business, and that T C Telephone failed to do so.

11. T C Telephone further acknowledges that Public Utilities Code Section 2889.5(a)(2) requires a telephone corporation to obtain confirmation of the subscriber's decision to change service providers by an independent Third-Party Verification company.

12. T C Telephone further acknowledges Public Utilities Code Section 2889.5(a)(3)(C) requires that the independent Third-Party Verification company shall record verification of the subscriber's decision to change service providers by an independent Third-Party Verification company.

13. T C Telephone alleges that one particular independent marketing company that performed services for TC Telephone failed to obtain or retain recordings by an independent Third-Party Verification company of the subscriber's decision to change service providers.

14. T C Telephone states that it has cooperated with staff's data requests and has taken action to correct violations and remedy wrongs and to ensure ongoing compliance.

15. The settlement is not contingent on Commission approval of operating authority for T C Telephone.

16. In order to resolve the legal issues raised by the OII, T C Telephone has agreed to pay a $200,000 penalty to the State of California General Fund. T C Telephone will pay $8,333.33 within five (5) days after the calendar date of the Commission's approval of this Agreement. T C Telephone will pay the remaining $191,666.67 penalty in twenty-three (23) equal monthly installments beginning thirty (30) days after the first payment of $8,333.33 is made.

17. The $200,000 penalty is substantial and appropriate in light of T C Telephone's offense and conduct. The penalty has been set at a level which should act as an effective deterrent to T C Telephone and others, but should not impact T C Telephone's ability to continue providing service to its customer base.

18. The Agreement is unopposed.

19. No hearing is necessary on the Agreement or this resolution of I.16-01-012.

Conclusions of Law

1. The Agreement is an uncontested agreement as defined in Rule 12.1(d) and satisfies the requirements of Rule 12.1(d).

2. According to GO 96-B, *Telecommunications Industry Rule 9 – Notification of DBAs*, if a utility does business under a name other than the name under which the Commission granted operating authority, the utility must list, as part of its preliminary statement, each name under which it does business and it must update this list, as necessary, by filing an advice letter.

3. Public Utilities Code Section 2889.5(a)(3) requires a telephone corporation to obtain confirmation by an independent Third-Party Verification company of a subscriber's decision to change service providers.

4. Public Utilities Code Public Utilities Code Section 2889.5(a)(3)(C) requires that an independent Third-Party Verification company shall record the subscriber's decision to change service providers.

5. The $200,000 penalty and terms for payment are reasonable.

6. No term of the parties' Agreement contravenes prior Commission decisions or other law.

7. The terms of the Agreement are reasonable given the record and the Commission's resolution of prior matters.

8. The terms of the Agreement are consistent with the public interest and should serve as a deterrent to similar conduct and offenses.

9. The parties' motion for adoption of the Agreement should be granted and the Agreement should be approved.

10. This decision should be made effective immediately to provide certainty regarding resolution of these proceedings and to enable T C Telephone and the Consumer Protection and Enforcement Division to implement the Agreement without delay.

11. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. We approve the June 24, 2016 *Settlement Agreement* of the Consumer Protection and Enforcement Division of the California Public Utilities Commission and T C Telephone LLC, doing business as, Horizon Cellular, attached to this decision as Appendix A.

2. The parties must comply with all provisions of the Settlement Agreement.

3. T C Telephone LLC, doing business as, Horizon Cellular, must pay a $200,000 penalty to the State of California General Fund by payment, no later than five days of the effective date of this order, in the amount of $8,333.33 and payment of the remaining $191,666.67 in twenty-three (23) equal monthly installments beginning thirty (35) days of the effective date of this order. All penalty payments 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, Room 3000, San Francisco, CA 94102. T C Telephone LLC, doing business as, Horizon Cellular shall write on the face of the check or money order "For deposit to the General Fund per Decision 16-09-048."

4. No hearings are needed to resolve this proceeding.

5. Investigation 16-01-012 is closed.

This order is effective today.

Dated September 29, 2016, at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
LIANE M. RANDOLPH
Commissioners

Commissioner Carla J. Peterman, being necessarily absent, did not participate.

APPENDIX A

Settlement Agreement Resolving the Commission's Order Instituting Investigation 16-01-012

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SETTLEMENT AGREEMENT

In order to avoid the costs and risks of further litigation and to expeditiously resolve this matter, the Consumer Protection and Enforcement Division[1] of the California Public Utilities Commission ("CPED"), and T C Telephone, LLC ("T C Telephone" or the "Applicant") and its predecessors, successors, affiliates, and assigns, hereby agree upon the following terms for the settlement of the Commission's Order Instituting Investigation (I.) 16-01-012, the Commission investigation to determine whether T C Telephone violated the laws, rules, and regulations governing the manner in which California consumers are switched from one carrier to another and billed for telephone services.

I. JOINT FACTUAL STATEMENT

1. The following joint factual statement is taken from the Commission's OII and Order to Show Cause, T C Telephone's Response to the Order to Show Cause, and the Consumer Protection and Enforcement Division's Opening Testimony submitted on May 13, 2016. T C Telephone LLC is a telephone company based in California with its principal place of business located at 243 Washington Street, Red Bluff, California, 96080.

2. T C Telephone obtained a Certificate of Public Convenience and Necessity (CPCN) to operate as a local exchange and interexchange carrier (U-6785-C), and in April 2011 obtained a wireless reseller registration license to operate as a commercial mobile radio service provider

[1] SED Staff's Opening Testimony in I.16-01-012 was submitted by the Commission's Utility Enforcement Branch (UEB), which was part of the Commission's Safety and Enforcement Division. As of June 1, 2016, UEB has been combined with other branches to form the Commission's new Consumer Protection and Enforcement Division. Herein, this document refers to CPED as SED's successor division.

(U-4410-C). T C Telephone offers residential, LifeLine, business, and cellular phone service. T C Telephone serves both residential and business telephone customers using the dba "Horizon Cellular."

3. On July 8, 2004, the Commission granted T C Telephone a CPCN (U-6875-C) to provide limited facilities-based and resold local exchange services as a Competitive Local Exchange Carrier (CLEC), and limited facilities-based and resold, long distance (interexchange) services as a non-dominant interexchange carrier (NDIEC). T C Telephone was designated as a wireline "Eligible Telecommunications Carrier" (ETC) on October 29, 2009,[2] and currently offers California LifeLine wireline services under CLEC Utility Identification Number U-6875-C.

4. On April 15, 2011, the Commission approved a wireless registration (WIR) application by T C Telephone and assigned corporate ID number U-4410-C to T C Telephone to provide resold wireless services as a commercial mobile radio service provider (CMRS, or wireless carrier). On September 10, 2014, T C Telephone dba Horizon Cellular filed Advice Letter (AL) #32, seeking authority to offer California LifeLine wireless services under U-4410-C, consistent with D.14-01-036. This application was withdrawn on March 15, 2016, during the pendency of the instant proceeding. TC Telephone was forced to withdraw by the California Lifeline staff due to the fact such staff was going to recommend denial of the application due to this proceeding. T C Telephone intends to resubmit a new Advice Letter (AL)

[2] Commission Resolution T-17231, October 29, 2009.

seeking authority to offer California LifeLine wireless service to the Commission's Communications Division following the execution of this Settlement Agreement.

5. The Commission's Consumer Affairs Branch (CAB) received complaints regarding Horizon Cellular in 2013. Among the complaints was a contact from an employee of the St. Francis Manor Apartments, a residence for senior citizens located in Sacramento, California, who called the CAB Fraud Hotline to complain that some of its senior residents were receiving sales pitches from a company called Horizon, offering free phone service. On January 1, 2013, T C Telephone notified its customers that it would begin providing service under the name Horizon Cellular. T C Telephone did not notify the Commission of its dba name at the time it began marketing under Horizon Cellular in 2013. When CAB began to receive consumer complaints about a company named Horizon Cellular in 2013, CAB was unable to initially identify Horizon Cellular as T C Telephone because the Commission's database did not have the proper information. According to G.O. 96-B, Telecommunications Industry Rule 9 – Notification of DBAs, a utility that does business under a name other than the name under which it was granted operating authority by the Commission must list, as part of its preliminary statement, each name under which the Utility does business. The Commission's CD notified T C Telephone to comply with the notification requirement. In response to CD's request, T C Telephone in November 2013 filed ALs #28 and #29 for its landline and wireless telephone services, respectively, to list its dba name Horizon Cellular with the Commission.

6. In 2014, T C Telephone was unable to provide CPED staff with Third Party Verification Tapes (TPVs) for twelve (12) consumers who complained to the Commission's CAB that their phone services were switched without their consent. CPED staff issued

slamming citations totaling $12,000 for violations of PU Code Section 2889.5(a)(3), which T C Telephone paid.

7. In 2016, the Commission issued I.16-01-012, alleging that T C Telephone had failed to obtain TPVs for acquired customers in 2013 and had failed to notify the Commission of its dba name Horizon Cellular. Public Utilities Code Section 2889.5(a)(2) requires a telephone corporation to obtain confirmation of the subscriber's decision to change service providers by an independent Third Party Verification (TPV) company, and Section 2889.5(a)(3)(C) requires that the independent TPV company shall record that verification.

8. T C Telephone alleges that it did not begin utilizing the dba name Horizon Cellular until June 2013. T C Telephone also alleges that the majority of the newly added customers in 2013 were as a result of incoming sales calls, not outbound, and therefore that the TPV requirement does not apply to said customers. Section 2889.5(a)(3)(D) provides, "a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers." T C Telephone states that it has cooperated with CPED staff's data requests and has taken action to correct violations and remedy wrongs with respect to affected customers and to ensure ongoing compliance.

II. AGREEMENT

9. Acknowledgements. T C Telephone acknowledges that G.O. 96-B requires telephone companies to notify the Commission of other names under which the telephone company does business, and that T C Telephone failed to do so. T C Telephone further acknowledges that Public Utilities Code Section 2889.5(a)(2) requires a telephone corporation to

obtain confirmation of the subscriber's decision to change service providers by an independent Third Party Verification (TPV) company, and Section 2889.5(a)(3)(C) requires that the independent TPV company shall record that verification, and that in certain instances T C Telephone alleges that one particular independent marketing company that performed services for TC Telephone failed to do so or failed to retain such recordings. Subject to T C Telephone's ongoing compliance with this Agreement and all applicable laws, and Commission rules, regulations, decisions, and orders, T C Telephone and CPED acknowledge that all issues raised in I.16-01-012 will have been fully resolved, and that CPED does not oppose the Commission's granting of T C Telephone dba Horizon Cellular's Advice Letter under U-4410-C seeking authority to offer California LifeLine wireless services, when it is re-filed.

7. Penalty Payments. In order to resolve the legal issues raised by the OII, T C Telephone will pay a $200,000 penalty to the State of California General Fund. T C Telephone will pay $8,333.33 within five (5) days after the calendar date of the Commission's approval of this Agreement. T C Telephone will pay the remaining $191,666.67 penalty in twenty-three (23) equal monthly installments beginning thirty (30) days after the first payment of $8,333.33 is made. All penalty payments shall be made payable to the California Public Utilities Commission and remitted to the Commission's Fiscal Office, 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The check or money order shall indicate the decision number of the Commission decision number incorporating this settlement.

III. GENERAL PROVISIONS

8. Scope and Effect of Agreement. This Agreement represents a full and final resolution of I.16-01-012, and the matters giving rise thereto. The parties understand that this Agreement is subject to approval by the Commission. As soon as practicable after the Parties

have signed the Agreement, a Motion for Commission Approval and Adoption of the Agreement will be filed. The Parties agree to support the Agreement, recommend that the Commission approve it in its entirety without change and use their best efforts to secure Commission approval of it in its entirety without modification. The Parties agree that, if the Commission fails to adopt the Agreement in its entirety without material change and issue the requested operating authority, the Parties shall convene a settlement conference within fifteen (15) days thereof to discuss whether they can resolve any issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's actions, the Agreement shall be rescinded and the Parties shall be released from their obligation to support this Agreement. Thereafter, the Parties may pursue any action they deem appropriate, but agree to cooperate to establish a procedural schedule for the remainder of the proceeding and agree that neither this Agreement nor its terms shall be admissible in such proceeding unless the Parties agree.

9. Successors. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.

10. Knowing and Voluntary Execution. The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties and privileges created hereunder, and that each enters this Agreement freely and voluntarily.

11. Authority to Execute Agreement. The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency or employment.

12. Entire Agreement. The Parties expressly acknowledge that the consideration recited in this Agreement is the sole and only consideration of this Agreement, and that no representations, promises, or inducements have been made by the Parties or any director, officer, employee, or agent thereof other than as set forth expressly in this Agreement.

13. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

14. Execution in Counterparts. This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement. A signature transmitted by facsimile shall be regarded as an original signature.

15. Interpretation of the Agreement. The Parties have bargained in good faith to reach the agreement set forth herein. The Parties intend the Agreement to be interpreted as a unified, interrelated agreement. Both of the Parties have contributed to the preparation of this Agreement. Accordingly, the Parties agree that no provision of this Agreement shall be construed against either of them because a particular Party or its counsel drafted the provision.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

T C TELEPHONE LLC

Dated: 6-24-2016

Travis Graff
Chief Executive Officer
T C Telephone LLC
243 Washington Street
Red Bluff, CA 96080

Dated: 6-24-2016

Lance J.M. Steinhart
Attorney for T C Telephone LLC
dba Horizon Cellular
1725 Windward Concourse, Suite 150
Alpharetta, GA 30005

CONSUMER PROTECTION AND ENFORCEMENT DIVISION

Dated: 6-23-2016

Jeanette Lo
Branch Chief, Utility Enforcement Branch
Consumer Protection and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Dated: 6/23/2016

Travis T. Foss
Staff Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

(End of Appendix A)