

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17558
August 24, 2017**

R E S O L U T I O N

Resolution T-17558. This Resolution Imposes Fines on those Voice over Internet Protocol (Digital Voice Service) Providers Who Have Failed to Report and Remit California’s Public Purpose Program Surcharges in accordance with Public Utilities Code Section 285.

SUMMARY

This Resolution fines specific Voice over Internet Protocol (Digital Voice Service) registered service providers each \$1,000 for their failure to comply with the state mandate to report and remit public purpose program surcharges as required by Public Utilities Code Section 285.

BACKGROUND

Public Utilities Code Section 239¹ defines VoIP service in California.

(a) (1) “Voice over Internet Protocol” or “VoIP” means voice communications service that does all of the following:

- (A) Uses Internet Protocol or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user’s location in Internet Protocol or a successor protocol.
- (B) Requires a broadband connection from the user’s location.
- (C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(2) A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network,

¹ All section references hereafter are to the California Public Utilities Code unless otherwise stated.

undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider's use of Internet Protocol technology is not a VoIP service.

(b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

Section 710 establishes the Commission's authority over VoIP service and providers.

Section 710(a) states "The Commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in subdivision(c). Subdivision(c) states "This section does not affect or supersede any of the following: (1) The Emergency Telephone Users Surcharge Law (Part 20 (commencing with section 41001) of Division 2 of the Revenue and Taxation Code) and the state's universal services programs (Section 285)."

Section 285 requires that the Commission impose a surcharge obligation on VoIP providers.

The CPUC is required by Section 285 to ensure that end-use-customers of interconnected VoIP service providers contribute to each of the Commission's public purpose programs (PPP). Section 285(c) states:

"The commission shall require interconnected VoIP service providers to collect and remit surcharges on their California intrastate revenues in support of the ... public purpose programs... "

Section 285(e)(1)(A), (B), and (C) provide the calculation methodologies that VoIP service providers may use to determine the intrastate revenue from which surcharges shall be calculated, essentially, prescribing the options for the apportioning of intrastate and interstate service revenues to determine that amount subject to surcharge in California. Section 285(e)(1) states:

For the purposes of determining what revenues are subject to a surcharge imposed pursuant to this section, an interconnected VoIP service provider may use any of the following methodologies to identify intrastate revenues:

(A) The inverse of the interstate safe harbor percentage established by the Federal Communications Commission for interconnected VoIP service for federal universal service contribution purposes, as these percentages may be revised from time to time.

(B) A traffic study specific to the interconnected VoIP service provider allocating revenues between the federal and state jurisdictions.

(C) Another means of accurately apportioning interconnected VoIP service between federal and state jurisdictions.”

To implement Section 285, the Commission’s Communications Division (CD) established the Digital Voice Service (DVS) provider designation so that it could register VoIP providers, enabling companies to report and remit PPP surcharges as well as to allow the Commission to track their compliance. The informal VoIP registration process requires companies to submit a form with the company’s name and contact information in order for the provider to obtain an identification number. The identification number is necessary, as it allows the provider to access the Commission’s proprietary Telecommunications and User Fee Filing System (TUFFS), the web portal that allows all other telecommunications corporations operating in California to report revenues and remit surcharges and user fees to the Commission.

DISCUSSION

As discussed above, intrastate revenue and surcharge payments are administered by the Commission through the TUFFS. Upon registration, CD informs DVS providers of their obligation to report intrastate revenue and remit surcharges on a monthly basis, along with instruction on the use of the TUFFS.

All of the DVS providers listed in Appendix A have completed the registration process but failed to report and remit surcharges for at least 12 consecutive months as of July 25, 2017, or have never reported or remitted surcharges. The Commission identified these carriers using the TUFFS, generating surcharge reporting and remittance compliance reports for all DVS providers.

In addition to notifying DVS providers upon registration, CD also notified the identified companies on multiple occasions regarding their surcharge reporting and remittance requirements and undertook the following steps to provide them with the opportunity to remedy their noncompliance:

1. In March 2017, CD noticed providers via e-mail.
2. In April 2017, CD noticed providers via U.S. mail.

3. Starting in April 2017, CD noticed providers by telephone.
4. This Draft Resolution and associated Notice of Availability will constitute the fourth and final notice to providers who are noncompliant with the state's surcharge reporting and remittance obligations.

A. Fines

Since all of the DVS providers in this Resolution have failed to comply with the State's regulatory requirements despite receiving multiple notices from the CD and instructions to remedy their noncompliance, we find it reasonable to fine, under the authority granted to the Commission under Section 2111² and 2108³, each of these providers for their violations.

The CD recommends that each of the service providers included here pay a fine in the amount of \$1,000 within thirty (30) days from the effective date of this Resolution. To achieve compliance, and avoid further fines, a service provider must also report in the TUFFS and remit all PPP surcharges, plus interest, for all months during which the DVS provider has been active, within 30 days of the effective date of this Resolution.

Additionally, CD proposes that the fines should 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 California Public Utilities Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The DVS provider should write on the face of the check or money order "For deposit to the State of California General Fund, per Resolution T-17558."

² Every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with, or procures, aids or abets any violation of any provision of the California Constitution relating to public utilities or of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in the violation or noncompliance, in a case in which a penalty has not otherwise been provided for the corporation or person, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

³ Every violation of the provision of this part or of any part of any order, decision, decree, rule, direction, demand or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

B. Suspension of Participation in Public Purpose Programs

A DVS provider listed in this Resolution shall not be eligible to receive subsidy or draw from any PPP funds until it pays the fines and remits all accrued surcharge revenues and interest. Since the CPUC universal service programs are funded by PPP surcharge revenues, no service provider in violation of the CPUC regulatory requirements may benefit from these programs until they become compliant.⁴

SAFETY IMPACT

This Resolution seeks to attain compliance of certain DVS providers to submit PPP surcharges. The funding of public purpose programs increases access to communication services to customers in California, thereby promoting safety benefits.

CONCLUSION

We find that the CD employed the necessary measures to ensure it properly noticed the DVS providers listed in Appendix A to this Resolution of their respective obligation to comply with the state surcharge requirements. The CD provided ample time and opportunity for these providers to achieve compliance. Thus, we find it reasonable to apply sanctions against each of the DVS providers listed and therefore impose a fine of \$1,000 each due within 30 days from the effective date of this Resolution. Payments of the fine are to be remitted to the State of California's General Fund. To achieve full compliance, any non-reported revenue and resulting PPP surcharges plus interest must also be reported and remitted within 30 days of the effective date of this Resolution.

COMMENTS ON THE DRAFT RESOLUTION

In compliance with Section 311(g), a Notice of Availability was e-mailed on July 25, 2017 to all telephone carriers and DVS providers 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.

FINDINGS AND CONCLUSIONS ⁴

1. Public Utilities Code Section (Section) 710(c) allows for Section 285 to require interconnected Voice over Internet Protocol service providers to support state-mandated telecommunications Public Purpose Programs.
2. Section 285 mandates that the California Public Utilities Commission (Commission) require Voice over Internet Protocol service providers to collect and remit surcharges in support of the State's universal service funds effective October 9, 2011.
3. Section 2111 provides for the application of fines to any corporation or person for failing to comply with the CPUC requirements from \$500 to \$50,000 for each offense.
4. Section 2108 provides for the application of fines to any corporation or person, allowing each violation to constitute a separate and distinct offense.
5. All of the Digital Voice Service (DVS) providers listed in Appendix A have failed to comply with surcharge remittance requirements on a continuous basis, for at least 12 months as of July 25, 2017.
6. Communications Division undertook proper and reasonable measures to notice the DVS providers listed in Appendix A of the Commission's surcharge requirements.
7. We find it reasonable to impose a \$1,000 fine, against each of the DVS providers listed in Appendix A for their failure to comply with the Commission's regulatory requirements. Fines shall be paid within 30 days from the effective date of this Resolution.
8. In order to become compliant, the listed DVS providers in Appendix A shall report intrastate revenue and pay all resulting public purpose program surcharges and any interest penalties owed, through the Commission's Telecommunications User Fees Filings System, within 30 days of the effective date of this Resolution.

⁴PPP funds include the California Advanced Services Fund, California High Cost Fund A, California High Cost Fund B, California LifeLine, California Teleconnect Fund, and the Deaf & Disabled Telecommunications Program.

9. To the extent that any of the listed Digital Voice Service providers participates in or draw from any public purpose program funds, the provider shall not be eligible to receive subsidy or draw from the public purpose program fund(s) until it pays the fines and remits all accrued surcharge revenues and interest.
10. The California Public Utilities Commission e-mailed a Notice of Availability on July 25, 2017, to all telephone carriers and DVS providers informing these parties that the draft of this Resolution is available at the California Public Utilities Commission's website <http://www.cpuc.ca.gov/> and is available for public comments. Communications Division informed these parties of the subsequent availability of the conformed Resolution, when adopted by the California Public Utilities Commission, at the same California Public Utilities Commission's website.

THEREFORE, IT IS ORDERED THAT:

1. The California Public Utilities Commission imposes a \$1,000 fine against each of the Digital Voice Service providers listed in Appendix A for failing to comply with Public Utilities Code Section 285 and its public purpose program surcharge remittance 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 California Public Utilities Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The Digital Voice Service provider shall write on the face of the check or money order "For deposit to the State of California General Fund, per Resolution T-17558."
3. In addition to the fine, the Digital Voice Service listed in Appendix A must report intrastate revenue and remit all resulting public purpose program surcharges due with any interest penalties owed, through the California Public Utilities Commission's Telecommunications User Fees and Filing System, within thirty (30) days of the effective date of this Resolution.
4. If any of the Digital Voice Service providers listed in Appendix A participates in or draws a subsidy from any public purpose program funds, a provider shall not be eligible to receive subsidy or draw from the fund(s) until it pays the fines and remits all accrued surcharge revenues and interest.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the California Public Utilities Commission at its regular meeting on August 24, 2017. The following Commissioners approved it:

TIMOTHY J. SULLIVAN
Executive Director

Appendix

Appendix A

Non-Compliant DVS Carriers

Count	Utility Name	U-Number
	Carriers That Have Never Reported in the TUFFS	
1	Datavo, Inc.	U-1103-C
2	Fusion Telecommunications International, Inc.	U-1104-C
3	Payment One Corporation	U-1108-C
4	Pacific Telephone Company LLC	U-1110-C
5	Appia Communications, Inc.	U-1111-C
6	Teleconnect, Inc	U-1113-C
7	Smart Resort, LLC	U-1133-C
8	CCP Holdings LLC.	U-1137-C
9	BroadvoxGo, LLC	U-1147-C
10	Aptela, Inc.	U-1149-C
11	Hill Top Ventures, LLC	U-1180-C
12	La Tigre Hi, LLC	U-1194-C
13	Quantum Enterprise Communications, Inc.	U-1200-C
14	Telonium Communications, LLC	U-1235-C
15	DashTel, LLC	U-1243-C
16	0921585 B.C., Ltd	U-1248-C
17	AMS NET, Inc.	U-1252-C
18	New Age Telecom, Inc.	U-1274-C
19	Petra Connections LLC	U-1300-C
20	Selarom, Inc.	U-1304-C
21	Bonita Seniorita Inc.	U-1336-C
22	Nexus IS Inc.	U-1343-C
23	Nettalk.com Inc.	U-1413-C
24	Danale Inc.	U-1414-C
25	Avid Telecom LLC	U-1418-C
26	Transera Communications, Inc.	U-1421-C
	Carriers That Have Not Reported for at Least One Year	
1	Accela, Inc.	U-1140-C
2	Smartresort Co. LLC	U-1160-C
3	Meriplex Telecom, LLC	U-1187-C
4	Ciao Telecom, Inc.	U-1188-C
5	Revcom Digital Communications, LLC	U-1189-C
6	ASM Communication, Inc	U-1236-C
7	Apeiron Systems Inc	U-1366-C