
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 13, 2020

Agenda ID #18256

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-379:

This is the draft Resolution of Administrative Law Judge (ALJ) Zhen Zhang regarding Resolving K.19-11-015, Appeal of KONATEL, INC. (U4482C) from Citation Number CD-2019-10-30-010 issued November 1, 2019 by the Communications Division of the California Public Utilities Commission. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Opening comments shall be served no later than April 1, 2020, and reply comments shall be served no later than April 7, 2020. Service is required on all persons on the attached service lists. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served electronically on ALJ Zhang at zhen.zhang@cpuc.ca.gov.

 /s/ ANNE E. SIMON

Anne E. Simon
Chief Administrative Law Judge

AES:gp2

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-379
Administrative Law Judge Division
[Date]

R E S O L U T I O N

RESOLUTION ALJ-379 Resolving K.19-11-015, Appeal of KONATEL, INC. (U4482C) from Citation Number CD-2019-10-30-010 issued November 1, 2019 by the Communications Division of the California Public Utilities Commission.

SUMMARY

This Resolution resolves K.19-11-015, the Appeal of KonaTel, Inc. (U4482C) from citation number CD-2019-10-30-010 issued November 1, 2019 by the Communications Division of the California Public Utilities Commission. Authorized by Public Utilities Code Sections 2101, 2107 and 2108, and Commission Resolution T-17601, citation number CD-2019-10-30-010 imposes a \$1,000 fine on KonaTel, Inc. By failing to file in a timely manner the Affiliate Transaction Report on California operations for the calendar year 2018, KonaTel, Inc. violated Public Utilities Code Section 702, General Order 104-A, and Commission Decision 93-02-019. The citation is sustained.

This proceeding should be closed.

BACKGROUND

The California Public Utilities Commission's (Commission) Communications Division (CD) oversees compliance of telecommunications carriers and has the authority to impose fines.¹ On November 1, 2019, CD issued citation number CD-2019-10-30-010 and imposed a \$1,000 fine on KonaTel, Inc. (KonaTel) for failing to file in a timely manner the Affiliate Transaction Report on California operations for the calendar year 2018 as required by Commission General Order (GO) 104-A and Decision (D.) 93-02-019.

¹ Resolution T-17601, June 22, 2018, p. 1; P.U. Code §§ 2101, 2107, 2108.

On November 7, 2019, KonaTel timely appealed citation number CD-2019-10-30-010 stating that it appeals the citation because the person responsible for filing certain CPUC reports unexpectedly quit and no longer worked for the company. Only after the person's emails were forwarded to other people in the company did KonaTel discover the outstanding filing.

On December 5, 2019, CD filed the compliance filing along with *Motion of the Communications Division for Leave to File Late the Compliance Filing for Citation CD-2019-10-30-010*. On January 29, 2020, the assigned Administrative Law Judge granted the motion.

On February 24, 2020, the Administrative Law Judge held an appeal hearing, in San Francisco California. KonaTel and CD appeared as parties at the hearing. In addition to other facts, the parties stipulated² as to the following:

- The deadline for filing an Affiliate Transaction Report was May 1, 2019.
- On February 20, 2019, CD sent an email to all wireless telecommunication carriers (including KonaTel) regarding the obligation to file an Affiliate Transaction Report.
- A second reminder was sent to KonaTel, informing KonaTel that the Affiliate Transaction Report was not submitted by May 1, 2019 and KonaTel must submit the report by May 31, 2019.
- On September 20, 2019, CD sent via email and registered mail with the United States Postal Service a third reminder. CD sent the third notice to David Price, the contact of record for KonaTel, to the corporate headquarters in Pennsylvania.³
- On November 4, 2019, CD notified KonaTel of the citation due to the failure to file an Affiliate Transaction report for 2018 via email and registered United States Postal Service mail to David Price.
- On November 4, 2019, Paul LaPier of KonaTel communicated with Jim Hyden of CD, contesting the citation.
- On November 5, 2019, KonaTel submitted the Affiliate Transaction Report for 2018.

² Joint Statement of Facts

³ Parties Statement of Agreed-Upon Facts, Feb. 19, 2020, Appendix A.

At the hearing, Jim Hyden, CD staff member, testified that CD sent KonaTel multiple notices regarding the Affiliate Transaction report. The notices were addressed to David E. Price, a compliance officer at the KonaTel office in Johnstown, Pennsylvania.

Mr. LaPier, Vice President for KonaTel, testified on behalf of KonaTel.

Mr. LaPier did not deny or challenge any of Mr. Hyden's testimony. Mr. LaPier testified that Mr. Price left KonaTel unexpectedly early 2019 and there were subsequent management changes as well. KonaTel missed the notices from CD until Mr. LaPier communicated with Mr. Hyden in November of 2019.

Mr. LaPier testified that KonaTel notified the Commission that the corporate office was no longer in Johnstown, Pennsylvania, but Dallas, Texas. Mr. LaPier testified that KonaTel hired him to help with regulatory compliance. Mr. LaPier created a regulatory compliance process, including a calendar of required filings, and ensuring that the email of people who have left the company are forwarded.

RESOLUTION OF THE APPEAL

Pursuant to GO 104-A and Decision (D.) 93-02-019, all public utilities, including wireless telecommunication carriers in California, such as KonaTel, are required to submit to the California Public Utilities Commission an annual Affiliate Transaction Report detailing all transactions it has with affiliate companies. The Wireless Identification Registration approval letter issued by the Commission to KonaTel dated December 1, 2015, requires KonaTel to submit an annual Affiliate Transaction Report to the Communications Division of the Commission, in accordance with D.93-02-019. The failure of a company to file an Affiliate Transaction report will result in a penalty of \$1,000 for the first event. Each subsequent notice increases the penalty by \$200.⁴

KonaTel does not deny that it missed the May 1, 2019 deadline to submit the Affiliate Transaction report for 2018. KonaTel did not submit the report until November 4, 2019. While KonaTel explained that it missed the filing because of staff turnover, KonaTel is responsible for meeting the statutory requirements of being a wireless provider in California. It is positive that recently KonaTel has instituted procedures to ensure that it does not miss regulatory compliance filings in the future. Nevertheless, KonaTel has failed to meet its responsibilities with regards to the Affiliate Transaction report for 2018. The \$1,000 fine is consistent with the laws and regulations of the Commission.

⁴ Resolution T-17601, Appendix A.

SAFETY

The Commission has broad authority to regulate public utilities, particularly regarding safety concerns. Although KonaTel's failure to file the Affiliate Transaction report for 2018 did not result in damage to any persons or property, the integrity of the regulatory process was harmed by KonaTel's disregard for statutory and Commission directives. The fine is a deterrent to future disregard of the Commission's regulatory process.

COMMENTS

Cal. Pub. Util. Code §311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. Accordingly, the draft Resolution was timely mailed for comments. Comments were served on _____, and reply comments were served on _____ by _____.

ASSIGNMENT OF PROCEEDING

Zhen Zhang is the assigned Administrative Law Judge for this citation appeal.

FINDINGS OF FACT

1. On February 20, 2019, Communications Division sent an email to all wireless telecommunication carriers (including KonaTel) reminding the carriers to file an Affiliate Transaction Report.
2. A second reminder sent by Communications Division informed KonaTel that the Affiliate Transaction Report was not submitted by May 1, 2019 and KonaTel must submit the report by May 31, 2019.
3. KonaTel did not file an Affiliate Transaction Report on May 1, 2019, the due date, or May 31, 2019.
4. On September 20, 2019, Communications Division sent via email and registered mail with the United States Postal Service a third reminder to David Price, the contact of record for KonaTel, to the corporate headquarters in Pennsylvania.
5. On November 1, 2019, Communications Division issued Citation number CD-2019-10-30-010 and imposed a \$1,000 fine on KonaTel, Inc. for failing to file the Affiliate Transaction Report on California operations for the calendar year 2018.

6. On November 4, 2019, Communications Division notified KonaTel of the citation due to the failure to file an Affiliate Transaction report for 2018 via email and registered U.S. Postal Service mail to David Price.
7. KonaTel did not notify Communications Division that David Price left the company or that the company's new headquarters were in Dallas, Texas until Paul LaPier of KonaTel communicated with Jim Hyden of Communications Division regarding the citation.
8. On November 5, 2019, KonaTel submitted the Affiliate Transaction Report for 2018.
9. No personal harm or property damage resulted from KonaTel's violation.

CONCLUSIONS OF LAW

1. KonaTel failed to comply with Commission's regulations and statutory obligations as a wireless provider in California.
2. KonaTel failed to file the Affiliate Transaction report for 2018 by the May 1, 2019 deadline.
3. The \$1,000 fine is consistent with Public Utilities Code Sections 702, 2101, 2107, 2108, and Commission Resolution T-17601.

IT IS THEREFORE ORDERED that:

1. The citation number CD-2019-10-30-010 is affirmed.
2. The \$1,000 fine to KonaTel, Inc. for failing to file the Affiliate Transaction Report on California operations for the calendar year 2018 is affirmed.
3. KonaTel Inc.'s appeal is denied.
4. KonaTel, Inc. must pay a fine of \$1,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102.
5. KonaTel, Inc. must make full payment within 30 days of the effective date of this Resolution. KonaTel, Inc. shall write on the fact of the check or money order, "For deposit to the General Fund pursuant to Resolution ALJ-379."

6. This proceeding is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

ALJ/ZZ1/gp2

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RESOLUTION ALJ-379 Resolving K.19-11-015, Appeal of KONATEL, INC. (U4482C) from Citation Number CD-2019-10-30-010 issued November 1, 2019 by the Communications Division of the California Public Utilities Commission.

INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached official service list who have provided an e-mail address for K.19-11-015.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.

Dated March 13, 2020, at San Francisco, California.

 /s/ GABRIELA PEREZ
Gabriela Perez

N O T I C E

Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event

***** SERVICE LIST *****
Last Updated on 13-MAR-2020 by: AMT
K1911015 LIST

***** PARTIES *****

Paul Lapier
Vp - Finance
KONATEL, INC
13601 PRESTON ROAD, STE 816E
DALLAS TX 75240
(214) 323-8430
Paul@Konatel.com
For: Konatel, Inc.

Rebecca M. Vorpe
Legal Division
RM. 3206
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-4443
rv2@cpuc.ca.gov
For: Communication Div.

***** STATE EMPLOYEE *****

***** INFORMATION ONLY *****

Christopher Clay
Legal Division
RM. 4300
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1123
cec@cpuc.ca.gov

Amy C. Yip-Kikugawa
Legal Division
RM. 4107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5256
ayk@cpuc.ca.gov
For: Communication div.

Zhen Zhang
Administrative Law Judge Division
RM. 5041
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2624
zz1@cpuc.ca.gov