



In the Matter of the Application of  
Speedypin Prepaid, LLC for  
Registration as an Interexchange  
Carrier Telephone Corporation  
Pursuant to the Provision of Public  
Utilities Code Section 1013.

Application 09-05-021  
(Filed May 22, 2009)

**MOTION  
OF THE CONSUMER PROTECTION AND SAFETY DIVISION  
TO COMPEL RESPONSES TO DATA REQUESTS**

**I. INTRODUCTION**

Pursuant to Rule 11.3 of the Commission's Rules of Practice and Procedure, the Consumer Protection and Safety Division (CPSD) submits the following motion to compel Applicant Speedypin Prepaid LLC (Speedypin) to respond to CPSD's second set of data requests, dated October 12, 2009.

Pursuant to Rule 11.3(a), on October 19, 2009, CPSD attempted in good faith to meet and confer with Speedypin to resolve its objections to CPSD's data request<sup>1</sup>. On October 21, 2009, Speedypin rejected CPSD's attempt, necessitating this motion to compel.

**II. BACKGROUND**

On October 12, 2009, ALJ Bemederfer held a conference call at Speedypin's request. In attendance were ALJ Karl Bemederfer; Jonathan Marshlian, counsel for Speedypin; CPSD supervisor Linda Woods; CPSD staff analyst Yolanda Valdez; and counsel for CPSD Travis Foss. During the call, Mr. Marshlian assured the ALJ and CPSD that none of the "phonecard sales" listed on Speedypin's Profit and Loss Statement

<sup>1</sup> Rule 11.3(a) requires the moving party to include with the motion a proposed ruling that indicates the relief requested; a proposed ruling is attached.

(a document obtained by CPSD in discovery) were in California. When asked where Speedypin is licensed, Mr. Marashlian responded with Texas, Florida, and Illinois.

ALJ Bemserderfer pointed out that counsel's statements in a phone call were insufficient, and indicated his preference that CPSD propound a data request and that Speedypin put its counsel's assertions in the form of a formal response to a data request. Later that day, CPSD propounded a second set of data requests to Speedypin.

Speedypin responded on October 16, 2009, answering some questions and objecting to others. The questions that Speedypin did not respond to are described below. Speedypin's primary objection is on the grounds of jurisdiction, namely, that Speedypin does not sell phonecards that can be used to make intrastate calls in California, and therefore the Commission has no jurisdiction to propound data requests to it.

On October 21<sup>st</sup> and 22<sup>nd</sup> CPSD's investigator attempted to verify whether the basis for Speedypin's objections were true by buying a Speedypin phonecard and placing intrastate calls, which she was able to do. (A copy of CPSD's investigator's declaration is attached as Exhibit A to CPSD's Amended Protest.)

### **III. DISCUSSION**

CPSD's discovery rights are very broad. Commission Rule 10.1 states:

Without limitation to the rights of the Commission or its staff under Pub. Util. Code Sections 309.5 and 314, any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

Public Utilities Code section 314 states: "The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility." CPSD is specifically

authorized to exercise all of the investigatory powers of the Commission. (PU Code Section 309.7(d).)

Meritless, general, or incomplete answers are not appropriate, and justify a motion to compel. (CA Code of Civil Pro. 2031.310(a).) Speedypin generally objects on jurisdictional grounds, which CPSD has demonstrated are both without factual basis and without legal basis. Speedypin's relevance and overbroad objections are not well-taken because Speedypin has made no effort to show that the burden, expense or intrusiveness of the questions outweighs the likelihood that the questions might lead to the discovery of admissible evidence.

**A. Second Data Request, Question 2**

Speedypin Prepaid offers its calling cards via online sales through its website. How does Speedypin Prepaid ensure that its phonecards are not sold to California consumers?

Because anyone in California might access the internet and purchase a phonecard from Speedypin, it would seem that Speedypin would have sales of phonecards in California unless Speedypin has somehow blocked California sales. If Speedypin's phonecards are sold in California, PU Code section 885 requires Speedypin to register prior to offering service. In a telephonic conference (described above), Speedypin assured CPSD that its phonecards are not sold in California.

A document obtained in discovery entitled "Profit & Loss Statement, Inception through August 31, 2009" shows \$188,340.10 in "phonecard sales." Thus, CPSD had good reason to ask the question "How does Speedypin Prepaid ensure that its phonecards are not sold to California consumers?"

Speedypin provided the following non-responsive answer:

Without waiving its General Objections, Speedypin Prepaid responds by stating it is lawful for Speedypin Prepaid to sell interstate and international telecommunications services to California consumers. Speedypin Prepaid does not require an NDIEC license from the CPUC before offering or providing interstate and/or international telecommunications services which might originate in California, but terminate outside of the state.

Speedypin Prepaid ensures that its PINS cannot be used to both originate and terminate calls within the borders of the state of California by blocking in-state terminations at the switch platform. The switch platform is programmed to recognize inbound calls originated in California, and if the customer enters a California destination number, the call is blocked from completion, thereby preventing consumers from originating and terminating intrastate telecommunications calls. Speedypin Prepaid further directs the CPSD to its response to request #1d for further explanation of its blocking technology.

This answer is non-responsive for two reasons. First, Speedypin's claim that it is lawful to sell international phonecards without first obtaining authority has already been overruled by the Commission in *Skynet Communications, Inc.* (D.09-01- 017). In that case, applicant Skynet (a phonecard provider) argued that it was not required to register because it did not offer intrastate phonecards (phonecards that can be used to place intrastate calls). Skynet argued that because its phonecards could only make *international* calls, it did not have to obtain authority from the Commission. However, the Commission stated: "Contrary to Skynet's assertions, these statutes [885-886] are not limited to phonecard providers providing intrastate services, and there is no exclusion for the hypothetical (and unusual) case where a provider of international phonecards would block access to intrastate calling on cards used in California."

Second, it is not true that Speedypin's phonecards cannot be used to make intrastate calls. CPSD was able to test this allegation by purchasing a Speedypin "international" phonecard and placing intrastate calls. (Exhibit 1 to the Amended Protest.) Moreover, a Speedypin representative assured CPSD's investigator that its cards could be used "any time" to make calls to "anywhere", including within California. (*Ibid.*) This indicates a regular business practice of selling phone cards in California without limitations on intrastate use.

Thus, Speedypin's response does not answer the question. Speedypin's answer is framed in terms of blocking intrastate calls; however, the question asks Speedypin to verify that sales of phonecards themselves are blocked in California, regardless of the use

to which they are put (whether the phonecards can make intrastate calls). It does not matter if a phonecard can only be used for interstate or international calls – all entities offering phone cards in California must be registered, regardless of intrastate call-blocking. See *Skynet Communications, Inc.* (D.09-01-017).

Speedypin's answer is based on the premise that it does not have to answer with regards to international phonecards, which is incorrect. If Speedypin's phonecard sales are not blocked in California, CPSD is entitled to know. Furthermore, CPSD is entitled to know how much of those phonecard sales is derived from ALL phonecards, not just those that Speedypin alleges cannot make intrastate calls (which is likely none of them, since Speedypin has not in fact placed a block on its phonecards). Thus, Speedypin has no valid grounds to refuse to respond to this data request.

**B. Second Data Request, Question 1(d)**

State whether any of the "Phonecard Sales" of \$188,344.10 were in California.

Speedypin's response is limited to sales of intrastate phonecards, not sales of any and all phonecards. Thus, it is non-responsive. CPSD is entitled to know whether any of these "Phonecard Sales" include international cards, but it appears that Speedypin has excluded such figures.

As explained above, pursuant to Section 885 and D.09-01-017 the Commission has jurisdiction over ALL sales of calling cards sold in California, not limited to interstate or international cards. Speedypin states that it blocks its cards from making intrastate calls, and therefore none of the "Phonecard Sales" listed on its corporate Profit and Loss Statement for 2009 are in California. As CPSD has discovered, this is a falsehood – its cards are not blocked from making intrastate calls.

Therefore, Speedypin's answer is non-responsive because it improperly limits the scope of the answer. CPSD asks that Speedypin be compelled to respond in terms of sales of ALL phonecard sales in California, regardless of whether the cards can be or were used for making interstate or international calls.

**C. Second Data Request, Question 1(e)**

For the three states indicated by counsel at the telephonic conference, indicate the amount of income revenue generated in that state (Illinois, Florida, Texas).

Speedypin objects on the grounds that CPSD's Question 1(e) is overbroad and irrelevant, claiming that the question is unrelated to fitness.

Again, it should be noted that CPSD's authority to conduct an investigation is extensive. Not only may CPSD propound questions that are relevant to the proceeding, it may also ask questions that are reasonably calculated to lead to the discovery of relevant evidence. Thus, relevance by itself is not a proper objection.

In any event, Speedypin's corporate history in other states is highly relevant to the Commission's determination of whether Speedypin is fit to operate in California, since the Commission has no history of California operations to evaluate. The Commission regularly looks at business practices in other states to evaluate fitness; indeed, the NDIEC registration form Question 8 requests information regarding sanctions in other states.

The question is also relevant because, if Speedypin has not been operating in California, where does the \$188,340 in "phonecard sales" come from? If not from California, then where? CPSD has a right to verify that no sales have occurred in California by verifying that the sales were in a different state.

Speedypin also objected on the grounds that the question is overbroad. However, CPSD has authority to ask very broad questions, "unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Rule 10.1.) Speedypin has not made any argument that Question 1(e) is too much of a burden, or too expensive, or too intrusive. It is logical to infer that all businesses maintain business records that would reflect the amount of revenue per state, and that providing such information is not overly burdensome.

Moreover, the scope of the question cannot be considered overly broad because CPSD limited the question to the three states *provided by Speedypin*. Speedypin itself, in

the October 12<sup>th</sup> telephone conference, provided the name of the three states in which it is licensed.

Whether or not Speedypin has a history of operating in other states without authority is directly relevant to the central issue in this case: whether Speedypin violated the law by operating here in California without authority. CPSD has good cause to believe Speedypin has already been operating in California, based on the evidence presented in its Amended Protest. Therefore, the objections should be overruled.

**D. Second Data Request, Question 1(f)**

Provide documents showing the grant of operating authority in each of those states.

This question relates back to Question 1(d). Speedypin's objection is exactly the same for this question as Question 1(d). For the reasons stated above, Speedypin's objections should be overruled.

**IV. SANCTIONS**

If a party's objections to a discovery request are without merit, too general, or non-responsive, and the party opposing the motion acts without substantial justification for doing so, pursuant to California Code of Civil Procedure Section 2031.310(h) the Commission may impose a monetary fine.

This case is appropriate for monetary sanctions. Speedypin's primary objection that the Commission lacks jurisdiction because Speedypin only sells international calls has turned out to be false. Speedypin gave specific, technical details about how it blocks its phonecards from making intrastate calls; thus, it is not likely that Speedypin misunderstood the question. It appears that Speedypin knowingly and intentionally misled the Commission for the purpose of avoiding jurisdiction.

Speedypin's actions have caused weeks of delay, and its misrepresentation and refusal to answer have caused CPSD a great deal of frustration and wasted hours spent attempting to verify a statement that apparently is untrue. The deceptions have caused CPSD to waste resources chasing down falsehoods, performing unnecessary

investigation, and engaging in lengthy e-mail arguments with Speedypin's counsel over jurisdiction and the permissible scope of discovery. Therefore, a fine for making false and frivolous objections to CPSD's permissible discovery is warranted.

Respectfully submitted

/s/ TRAVIS T. FOSS

---

TRAVIS T. FOSS  
Staff Counsel

Attorney for the  
Consumer Protection and Safety Division  
California Public Utilities Commission  
505 Van Ness Avenue, Room 4007  
San Francisco, CA 94102  
Telephone: (415) 703-1998  
Facsimile: (415) 703-2262  
E-Mail: [tff@cpuc.ca.gov](mailto:tff@cpuc.ca.gov)

November 2, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document  
**“MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION TO  
COMPEL RESPONSES TO DATA REQUESTS”** in **A.09-05-021**.

A copy has been e-mailed on all known parties of record who have provided e-mail addresses. In addition, all parties have been served by first-class mail.

Executed in San Francisco, California, on the **2nd** day of **November, 2009**.

/s/ HALINA MARCINKOWSKI

---

HALINA MARCINKOWSKI

**SERVIE LIST for A.09-05-021**

Larry@speedypin.com  
tff@cpuc.ca.gov  
jsm@CommLawGroup.com  
yol@cpuc.ca.gov  
kjb@cpuc.ca.gov  
ljw@cpuc.ca.gov