

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**11-01-11  
03:47 PM

November 1, 2011

Agenda ID #10806  
Ratesetting

## TO PARTIES OF RECORD IN APPLICATION 11-01-027

This is the proposed decision of Administrative Law Judge (ALJ) W. Anthony Colbert. 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 proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Colbert at [wac@cpuc.ca.gov](mailto:wac@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ JANET A. ECONOME for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:oma

Attachment

Decision **PROPOSED DECISION OF ALJ COLBERT** (Mailed 11/1/2011)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
Consumer Telcom, Inc. (U6984C), for a  
Certificate of Public Convenience And  
Necessity to Provide Resold Commercial  
Local Exchange and Interexchange  
Telecommunications Services within the  
State of California.

Application 11-01-027  
(Filed January 31, 2011)

**DECISION GRANTING MOTION TO WITHDRAW AND  
DISMISSING THIS PROCEEDING WITH CONDITIONS****1. Summary**

This decision grants the motion of Consumer Telcom, Inc. (Consumer Telcom or Applicant) to withdraw its application for a certificate of public convenience and necessity for authority to provide resold commercial local exchange and interexchange services in the service territories of Pacific Bell Telephone Company, d/b/a AT&T California and dismisses the proceeding with conditions. Applicant and/or any of its current officers, directors or owners of more than 10% of its outstanding shares shall reference this Decision, the Application and the Protest of the California Public Utilities Commission (CPUC or Commission)'s Consumer Protection and Safety Division in any future application that they, together or separately, shall make to the Commission for authorization to provide telecommunications services in California.

**2. The Party**

Consumer Telcom, Inc. is a privately held California corporation. Applicant's principal place of business is located at 701 North Green Valley Parkway, Suite 200 Henderson, NV 89014.

**3. Factual and Procedural Background**

Consumer Telcom, Inc. (Consumer Telcom or Applicant) sought to provide specialized discretionary intra-exchange dedicated point-to-point broadband services for commercial subscribers as a competitive local exchange carrier (CLEC) on a non-facilities based resold basis in the Pacific Bell Telephone Company, d/b/a AT&T California (AT&T) operating territory. Applicant did not propose to provide "basic (local) service" as defined by D.96-10-066. Applicant sought to continue providing interexchange services statewide under a consolidated local exchange and interexchange certificate of public convenience and necessity (CPCN).

In Section 17 of the application, Consumer Telcom stated that neither applicant, any affiliate, officer, director, partner nor owner of more than 10% of applicant, or any person acting in such a capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

In Section 18 of the application, it stated that no officer, director, partner or person owning more than 10% of applicant, or anyone acting in such a capacity whether or not formally appointed, held one of these positions with a telecom carrier has been found criminally or civilly liable by a court of appropriate jurisdiction for a violation of Section 17000 et seq. of the CA Business and Professions Code, or for any actions which involve misrepresentation to

consumers, and to the best of Applicant's knowledge, is not currently under investigation for similar violations.

### **3.1. Protest Filed by Consumer Protection and Safety Division (CPSD)**

Pursuant to Rule 2.6, the California Public Utilities Commission (CPUC or Commission)'s CPSD, on March 7, 2011, filed a protest to the application. CPSD claimed that the Applicant violated Rule 1.1 of the Rules of Practice and Procedure<sup>1</sup> because its certifications in Sections 17 and 18 of its application are false. CPSD claimed to have found three FCC slamming violations (Applicant changed a consumer's telecommunication service provider without obtaining authorization and verification from the consumer) relating to the Applicant, dating January 29, 2008, April 27, 2009, and March 25, 2010.

CPSD also represented that Applicant failed to disclose that its prior license as an interexchange carrier, issued in 2002, was revoked in 2004 for failure to comply with all Commission ordered requirements.

Finally, CPSD noted that there are 90 consumer complaints and inquiries regarding Applicant in the CPUC Consumer Affairs Branch complaint database, dating back to January 2009.

Because of these alleged violations, CPSD believed that this Application required further review by the Commission.

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<sup>1</sup> All references to Rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website at:  
[http://docs.cpuc.ca.gov/WORD\\_PDF/AGENDA\\_DECISION/143256.PDF](http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF).

### **3.2. Reply of Consumer Telcom to the Protest**

On March 24, 2011, Consumer Telcom filed a reply to the CPSD protest. On the same day, they also filed a response to a CPSD Data Request, which was incorporated into their reply.

With regard to failure to disclose revocation of previous license, Consumer Telcom stated that because the violation (1) occurred more than six years ago, (2) was already on record at the Commission, and (3) was simply an administrative matter resulting from an accounting error, there was no violation of Rule 1.1. The violation occurred in 2004, more than six years ago. Additionally, in its approval of the Applicant's CPCN to provide Inter and Intra local access and transport area (LATA) telecom services as a switchless reseller in 2005, the Commission recognized the revocation of the license but stated that Applicant had since complied with the requirements.

With regard to the FCC violations, Consumer Telcom states in the response to the CPSD Data Request, that it petitioned four Orders from 2010 given by the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau, FCC, stating that the Deputy Chief's ruling was "arbitrary and capricious" because rulings in 2009 found that Consumer Telcom's verifications were acceptable.

With regard to consumer complaints, Consumer Telcom was still assembling its own complaints files, but noted that in no instance have its officers, directors, partners or owners been sanctioned.

### **3.3. Prehearing Conference (PHC)**

On June 6, 2011 a PHC was held. In addition to the allegations set forth in their protest, CPSD asserted that despite claiming it had no affiliates, Consumer Telcom may be affiliated with U.S. Telecom Long Distance, Inc.<sup>2</sup> CPSD states that the affiliation was not disclosed in the application or in the Applicant's response to CPSD's data request. Consumer Telcom took issue with CPSD's assertions and indicated that there was no false or misleading information given in the application.<sup>3</sup>

### **3.4. Motion to Withdraw**

On June 24, 2011 the Applicant filed a Motion to withdraw its application. The Applicant stated that it had made a good faith effort to prosecute its application and had timely and thoroughly responded to CPSD's requests for information. However, the Applicant concluded that the "expenditure of time, resources and money necessary to continue pursuing the Application does not justify the benefits the Company expected from its offering of competitive local exchange service in California."<sup>4</sup>

### **3.5. Response of CPSD to the Motion for Withdrawal**

On June 28, 2011 CPSD filed a response to the Applicant's request to withdraw. CPSD repeated its assertions the there was evidence of possible violations and negative administrative actions that were not disclosed by

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<sup>2</sup> PHC Tr. 9:14-22.

<sup>3</sup> PHC Tr. 9:25-11:25.

<sup>4</sup> Consumer Telecom Motion to Withdraw, at 1-2.

Consumer Telcom.<sup>5</sup> CPSD believes that the Applicant's motion to withdraw should be granted with certain conditions including that the Applicant and/or any of its current officers, directors or owners of more than 10% of its outstanding shares shall reference this Decision, the Application (A.) 11-01-027 and the CPSD Protest in any future applications that they, together or separately, shall make to the Commission for authorization to provide telecommunications services in California.<sup>6</sup>

#### **4. Discussion**

We grant Applicant's Motion to withdraw its application. In addition, based on the circumstances of this case, we agree with the recommendation of CPSD and dismiss the case with the following condition: The Applicant and/or any of its current officers, directors or owners of more than 10% of its outstanding shares shall reference the instant Decision, Application and the CPSD Protest in any future applications that they, together or separately, shall make to the Commission for authorization to provide telecommunications services in California.

#### **5. Request to File Under Seal**

Pursuant to Rule 11.4, Applicant has filed a motion for leave to file Exhibit E to the application as confidential material under seal. Applicant represents that the information is sensitive, and disclosure could place it at an unfair business disadvantage. We have granted similar requests in the past, and do so here.

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<sup>5</sup> CPSD Response to Motion to Withdraw, at 1.

<sup>6</sup> *Id.*

**6. Categorization and Need for Hearing**

In Resolution ALJ 176-3269, dated February 3, 2011, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. CPSD has protested the application and the Applicant has requested that the application be withdrawn. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

**7. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**8. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge (ALJ) in this proceeding.

**Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on February 3, 2011.
2. CPSD filed a protest on March 7, 2011.
3. CPSD's protest alleged that the Applicant violated Rule 1.1 because its certifications in Sections 17 and 18 of the application are false.
4. CPSD's protest alleged that the Applicant failed to disclose that its prior license as an interexchange carrier, issued in 2002, was revoked in 2004 for failure to comply with all Commission ordered requirements.

5. CPSD alleged that there are 90 consumer complaints and inquiries regarding Applicant in the CPUC Consumer Affairs Branch complaint database, dating back to January 2009.

6. On March 24, 2011, Consumer Telcom filed a reply to the protest of the CPSD.

7. A PHC was held on June 6, 2011.

8. On June 24, 2011 Applicant filed a Motion to Withdraw the Application.

9. On June 28, 2011 CPSD filed a Response to the Applicant's Motion to Withdraw.

10. CPSD has requested that conditions be placed on the approval for the Motion to Withdraw.

11. Applicant has filed a motion for leave to file confidential financial information under seal.

### **Conclusions of Law**

1. Applicant's Motion to Withdraw should be granted.

2. The Application should be dismissed with conditions.

3. The Applicant and/or any of its current officers, directors or owners of more than 10% of its outstanding shares should be required to reference this Decision, the Application and the CPSD Protest in any future applications that they, together or separately, shall make to the Commission for authorization to provide telecommunications services in California.

4. Applicant's motion to file material under seal should be granted, material under seal should not be made accessible or disclosed to anyone other than the Commission and its staff for two years, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge.

**O R D E R**

**IT IS ORDERED** that:

1. Consumer Telcom, Inc.'s Motion to Withdraw is granted.
2. Consumer Telcom, Inc.'s application is dismissed with conditions.
3. Consumer Telcom, Inc. and/or any of its current officers, directors or owners of more than 10% of its outstanding shares are required to reference this Decision, the Application and the Consumer Protection and Safety Division Protest in any future applications that they, together or separately, shall make to the California Public Utilities Commission for authorization to provide telecommunications services in California.
4. Consumer Telcom, Inc.'s request to file materials under seal is granted, materials under seal shall not be made accessible or disclosed to anyone other than the California Public Utilities Commission (CPUC or Commission) and its staff for two years, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.
5. Application 11-01-027 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.