

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Miko Telephone Communications, Inc. and its sole owner and President Margaret Currie, to determine whether it has violated the laws, rules and regulations governing: 1) payment of surcharges to the Commission, 2) authorized operation in California, 3) providing accurate information to the Commission and 4) the manner in which California consumers are switched from one long distance carrier to another.

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
**MARCH 16, 2004**  
**SAN FRANCISCO**  
**I.04-03-016**

**ORDER INSTITUTING INVESTIGATION INTO THE  
OPERATIONS OF MIKO TELEPHONE COMMUNICATIONS, INC. (U-6792-C)**

**I. INTRODUCTION**

Miko Telephone Communications, Inc. (Miko), is an Alabama corporation with its principal place of business in Birmingham, Alabama. Miko is owned and operated by its President, Margaret Currie.

The Consumer Protection and Safety Division's (CPSD) Enforcement Branch (Staff) began a preliminary investigation of Miko in November 2003, to investigate allegations that Miko had switched California consumer's pre-subscribed long distance service to Miko without the subscriber's authorization. As the result of CPSD's investigation of Miko, Staff has found that Miko, 1) failed to pay to the Commission fees and surcharges required of all telecommunication service providers operating in California, 2) conducted operations in California without a valid certificate of public convenience and necessity (CPCN), 3) made a material misrepresentation in response to a data request from the Telecommunication Division, and 4) violated regulations governing how telephone subscribers are switched from one interexchange carrier to another.

On July 25, 2001, Miko filed Application (A.) 01-07-030 seeking authority to operate as a switchless reseller of interLATA and intraLATA telecommunications services within California. On September 18, 2001, the Commission issued Decision (D.) 01-09-038 granting Miko a certificate of public convenience and necessity (CPCN) to operate as a switchless reseller of intraLATA and interLATA service within California and assigning Miko corporate identification number U-6582-C. On March 12, 2003, Miko's CPCN was revoked by the Commission for failure to report that it had begun to exercise the CPCN within twelve months, pursuant to Section 16 of Appendix A in (D.) 01-09-038.<sup>1</sup> On April 23, 2003, Miko filed (A.) 03-04-026 seeking authority to once again operate as a switchless reseller of interLATA and intraLATA telecommunications services within California. On September 4, 2003, the Commission issued D.03-09-034, granting Miko a CPCN to operate in California and assigning Miko corporate identification number U-6792-C. From March 12, 2003 to September 4, 2003, Miko did not have an active CPCN, although it continued to operate during this time period. Miko has ceased operations in California as of approximately September 2003.

## II. SUMMARY OF STAFF ALLEGATIONS

CPSD Staff has prepared a report documenting its investigation to date. The report is released today and shall be placed in the Commission's public formal file for this proceeding.

Staff has discovered that Miko has not paid the fees and surcharges to the Commission as ordered in Section 2 of Appendix A to (D.) 01-09-038, the decision which granted Miko its CPCN. Staff alleges that Miko billed California consumers over \$3.5 million between May 2002 and September 2003 for intrastate long distance telephone service, and failed to remit to the Commission the following fees (these fees are mandated by D.01-09-038):

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<sup>1</sup> Section 16, of Appendix A in (D.) 01-09-038 states "The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order."

1. Universal Lifeline Telephone Service
2. California Relay Service and Communications Devices Fund.
3. User Fee.
4. California High Cost Fund-A
5. California High Cost Fund-B
6. California Teleconnect Fund.

The specific percentages of each surcharge vary over the period of May 2002 to September 2003, and a schedule of the percentage amounts is included in Staff's report as Exhibit L.

On November 21, 2003, Staff requested that Miko report the amount of surcharges and fees it has paid to the Commission as ordered by D.01-09-038. Miko reports that it has not submitted any fees, and that its billing aggregator was to collect and handle these fees. Miko's billing aggregator, ILD Telecommunications, Inc., (ILD) states that it was not required to collect and remit these fees and surcharges. Staff has reviewed the contract between ILD and Miko and determined that there is no provision requiring ILD to do so. Based on the gross amount of billings reported by ILD, Staff determined that Miko owes the Commission \$27,383 for 2002 and \$54,019 for 2003 in uncollected fees and surcharges.<sup>2</sup> Pursuant to Public Utilities Code section 405<sup>3</sup>, Miko may be penalized up to 25% (\$20,350) of the amount in default for failure to pay the required fees.

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<sup>2</sup> The calculations of the fees and surcharges for the period of May 2002 to September 2003 are included in Staff's investigative report as Exhibit K.

<sup>3</sup> CPUC Code Section 405 states, "If any person or corporation subject to this chapter is in default of the preparation and submission of any report or the payment of any fee required by this chapter for a period of 30 days or more, the commission may suspend or revoke the certificate of public convenience and necessity, permit, or other operating authority of the person or corporation or order the person or corporation to cease and desist from conducting all operations subject to the jurisdiction of the commission, and the commission may estimate from all available information the appropriate fee and may add to the amount of that estimated fee a penalty not to exceed 25 percent of the amount on account of the failure, refusal, or neglect to prepare and submit the report or to pay the fee, and the person or corporation shall be estopped to complain of the amount of the commission's estimate.

On February 6, 2004, Staff counsel informed Miko that it is legally responsible for remitting these fees pursuant to Public Utilities Code section 405, and requested payment within 10 days. To date, Miko has not remitted the required fees and surcharges.

From March 12, 2003 to September 4, 2003, Miko did not have operating authority in California. Staff alleges that Miko conducted unauthorized operations in California throughout this time period. Staff documents that during the period of suspension ILD reported over \$2.3 million dollars in gross billings and SBC processed 28,854 Primary Inter-Exchange Carrier (PIC) changes.

On March 3, 2003, the Telecommunications Division issued a data request to all interexchange carriers to file annual reports that included specific information, detailed in Attachment A to the request<sup>4</sup>. On March 17, 2003, Margaret Currie, Miko's President, personally responded to the Telecommunication Division's data request, Question 7, stating that Miko began operations in California in January 2003<sup>5</sup>. However, ILD Telecommunications, Inc. commenced billing activity for Miko's California subscribers in May 2002 and SBC processed 26,833 PIC changes for Miko's California subscribers from May 2002 through December 2002. Therefore, Staff contends that Miko's response to the data request from the Telecommunication Division was false and misleading.

Staff documents that from October 2002 to November 2003, the Commission's Consumer Affairs Branch (CAB) received 218 contacts from California consumers complaining about Miko's business practices. Staff's investigation reveals that 196 (91%) of the consumer complainants alleged that Miko switched their long distance telephone service without authorization.

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<sup>4</sup> See Attachment C to Staff's report.

<sup>5</sup> See Attachment D to Staff's report.

On a monthly basis SBC provides CPSD with an Inter/Intra LATA Subscription Activity Report, which tracks by month the number of primary interexchange carrier (PIC)<sup>6</sup> changes that it processes for each interexchange carrier. This report also reflects, by carrier, the number of consumer disputes of alleged unauthorized PIC changes. SBC reported to the Commission that it had received 1702 (6.34% of the Miko PIC changes processed) complaints from California consumers in calendar year 2002 alleging that Miko had changed their PIC without first obtaining the consumer's authorization. SBC reported to the Commission that the number of such complaints had risen to 2869 (8.06% of the Miko PIC changes processed) for 2003.

Finally, Staff reports that Miko has ceased operations in California as of approximately September 2003.

### **III. DISCUSSION**

Public Utilities Code section 405 requires the payment of all fees required by law, and gives the Commission the authority to suspend or revoke the CPCN of the telephone corporation in default of such fees.<sup>7</sup> Section 405 further authorizes the Commission to impose a monetary penalty of up to 25% of the amount in default for failing, refusing, or neglecting to pay the required fees. Pursuant to section 405, it is the legal responsibility of the telephone corporation to remit these fees and surcharges.

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<sup>6</sup> The Primary Inter-exchange Carrier (PIC) designation uniquely identifies each telecommunications service provider allowing the Local Exchange Carrier to correctly route telephone activity to the subscriber's carrier of choice. A "slam" occurs when an unauthorized service provider notifies the LEC to change a subscriber's PIC from an incumbent service provider to the unauthorized carrier's designation.

<sup>7</sup> Section 405 states, "If any person or corporation subject to this chapter is in default of the preparation and submission of any report or the payment of any fee required by this chapter for a period of 30 days or more, the commission may suspend or revoke the certificate of public convenience and necessity, permit, or other operating authority of the person or corporation or order the person or corporation to cease and desist from conducting all operations subject to the jurisdiction of the commission, and the commission may estimate from all available information the appropriate fee and may add to the amount of that estimated fee a penalty not to exceed 25 percent of the amount on account of the failure, refusal, or neglect to prepare and submit the report or to pay the fee, and the person or corporation shall be estopped to complain of the amount of the commission's estimate."

Staff's report demonstrates that Miko is aware that it has failed to pay the surcharges and fees described above. Staff has documented that Miko's billing aggregator, ILD, has not paid these fees on Miko's behalf. The Commission's Telecommunication Division and Fiscal and Administrative Services Division have also reported that no fees were collected for Miko. Therefore, until these fees are paid, we will suspend Miko's operating authority.

Public Utilities Code section 1013(a) requires telephone corporations to have a certificate of public convenience and necessity. On March 12, 2003, Miko's operating authority was revoked pursuant to section 16 of Appendix of D.01-09-038, for failure to report that it had begun to exercise its CPCN within twelve months. Demonstrating that it was aware of the revocation, Miko re-applied for a CPCN on April 23, 2003, but was not granted operating authority until September 4, 2003. However, Miko continued to operate during this time period without a CPCN. The Commission may impose penalties pursuant to Public Utilities Code section 2107 and 2108 of \$500 to \$20,000 per day for violations of Commission decisions and statutes. The Commission will consider an appropriate penalty for each day that Miko operated without a CPCN.

Rule 1 of the Commission's Rules of Practice and Procedure requires that regulated companies provide truthful information to the Commission. If Miko provided false or misleading information that it did not begin operations until January 2003, when in fact it began providing services and issuing bills without a CPCN in May of 2002, the Commission may consider imposing appropriate penalties pursuant to Public Utilities Code section 2107 of \$500 to \$20,000 for the offense.

Public Utilities Code section 2889.5(a)(1) requires telephone corporations and their agents to thoroughly inform the subscriber of the nature and extent of the service offered, and section 2889.5(a)(2) specifically requires the telephone corporation to establish whether the subscriber intends to make any change to the subscriber's telephone service and to explain any charges associated with that change. Consumer complaints made to CAB and to SBC cause us concern that Miko engaged in a pattern of switching consumers without their authorization, or failing to thoroughly explain the

nature and extent of products or services being offered. For each proven instance of an unauthorized switch in violation of any section of 2889.5, the Commission will consider penalties pursuant to Public Utilities Code section 2107 and 2108 in the amount of \$500 to \$20,000 per offense.

Therefore **IT IS ORDERED** that:

1. An investigation on the Commission's own motion is hereby instituted into the operations of Miko Telephone Communications, Inc., and its sole owner and President Margaret Currie, (Respondents), to determine whether:

- a) Respondents violated P.U. Code section 405 by failing, refusing, or neglecting to pay surcharges and fees required by D.01-09-038 (Appendix A);
- b) Respondents violated P.U. Code section 702 by failing to pay surcharges and fees required by a Commission decision, and by violating a Commission directive by continuing to operate without valid operating authority;
- c) Respondents violated P.U. code section 1013(a) by operating without a certificate of public convenience and necessity;
- d) Respondents violated Rule 1 of the Commission's Rules of Practice and Procedure, by providing false information to the Commission that Miko did not begin operations in California until January of 2003, when in fact Miko began operating in California in May of 2002;
- e) Respondents should be ordered to pay reparations pursuant to P.U. Code section 734; and whether respondents should be ordered to cease and desist from any unlawful operations and practices, or have special conditions and restrictions imposed on it;
- f) Respondents' certificate of public convenience and necessity should be permanently revoked for violations of P.U. Code section 405 and Commission orders, decisions, or directives;

- g) Respondents should be fined pursuant to P.U. Code sections 2107 and 2108 for violations of the P.U. Code or other order, decision, rule, direction, demand or requirement of the Commission.

2. Miko's certificate of public convenience and necessity is hereby suspended until Miko pays to the Commission all of the outstanding fees and surcharges required by law. Miko is directed not to conduct any further business in California without valid operating authority.

3. To facilitate the completion of this investigation, and consistent with the provisions of section 314, Respondents are ordered to preserve until further order by the Commission all consumer account records, verification tapes, PIC dispute records, and consumer complaints involving California consumers, and to respond in a timely fashion to all of Staff's data requests.

4. Staff's report includes PIC dispute information for Respondents that SBC has identified as proprietary pursuant to P.U. Code section 583. Staff's report also includes documents obtained from Miko, which Miko has designated proprietary information. This information is relevant to the airing of the issues in this proceeding and is hereby made public.

5. An evidentiary hearing on the allegations set forth in this order instituting investigation, Staff's report, and any additional information which Staff wishes to advance that is relevant to the issues in the proceeding, shall be held on a date to be set at the Commission's hearing room, 505 Van Ness Avenue, San Francisco, 94102.

6. The Staff shall continue discovery and continue to investigate the operations of Respondents. Any additional information that Staff wishes to introduce, as part of its direct showing in this proceeding, shall be provided to the Respondents in advance of any hearings in accordance with the schedule directed by the assigned Administrative Law Judge. Staff need only respond to discovery requests directed at Staff's investigation of the Respondents and Staff's prepared testimony offered in this proceeding.

7. Staff shall monitor consumer complaints made against Respondents. We expect Staff to bring additional evidence of any alleged harmful business practices by Respondents to our attention (e.g. new types of violations). Staff may propose to amend the OII to add additional respondents or to raise additional charges. Any such proposal shall be presented to the Commission in the form of a motion to amend the OII and shall be supported by a Staff declaration supporting the proposed amendments or additional named respondents.

8. This ordering paragraph suffices for the “preliminary scoping memo” required by Rule 6 (c) of the Commission’s Rules of Practice and Procedure. This proceeding is categorized as an adjudicatory proceeding and will be set for evidentiary hearing. The issues of this proceeding are framed in the above order. A prehearing conference shall be scheduled for the purpose of setting a schedule for this proceeding including dates for the exchange of additional written testimony, determining which of the Staff’s witnesses will need to testify, and addressing discovery issues. This order, as to categorization of this proceeding, can be appealed under the procedures in Rule 6.4. Any person filing a response to this order instituting investigation shall state in the response any objections to the order regarding the need for hearings, issues to be considered, or proposed schedule. However, objections must be confined to jurisdictional issues that could nullify any eventual Commission decision on the merits of the alleged violations, and not on factual assertions that are the subject of evidentiary hearings.

Service of this order on Respondents will be effectuated by personally serving a copy of the order and Staff’s report on the Respondents’ designated agent for service in California:

CT Sacramento  
CT Corporation System  
915 L. Street, Suite 1440  
Sacramento, CA 95814  
Tele: 916-441-6568  
Fax: 916-441-6420

This order is effective today.

Dated March 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners