

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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October 31, 2011

Agenda ID #10790
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 11-01-025

This is the proposed decision of Administrative Law Judge (ALJ) 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. 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 and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

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

KVC:avs

Attachment

Decision PROPOSED DECISION OF ALJ COLBERT (Mailed 10/31/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of U.S. Telecom Long Distance, Inc. (U-5920-C), for a Certificate of Public Convenience And Necessity to Provide Resold Commercial Local Exchange and Interexchange Telecommunications Services within the State of California.

Application 11-01-025
(Filed January 26, 2011)

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

1. Summary

This decision grants the motion of U.S. Telecom Long Distance, Inc. to withdraw its application for a certificate of public convenience and necessity (CPCN) for authority to provide resold 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 ten percent of its outstanding shares shall reference this Decision, the Application and the Protest of the Commission's Consumer Protection and Safety Division (CPSD) in any application that they, together or separately, shall make to the Commission for authorization to provide telecommunications services in California.

2. The Party

U.S. Telecom Long Distance, Inc., (U.S. Telecom or Applicant) is a privately held Nevada corporation. Applicant's principal place of business is

located at 3960 Howard Hughes Parkway, 5th Floor, #5001F, Las Vegas, NV 89109.

3. Factual and Procedural Background

On January 26, 2011, U.S. Telecom filed an application for a Certificate of Public Convenience and Necessity (CPCN) to provide specialized discretionary intra-exchange dedicated point-to-point broadband services for commercial subscribers as a competitive local carrier (CLC) under a non-facilities based resold basis in the AT&T operating territory. Applicant did not propose to provide “basic (local) service” as defined by Decision (D.) 96-10-066. Applicant sought to continue providing interexchange services statewide under a consolidated local exchange and interexchange CPCN through modification of its current “registration license.”

In Section 17 of the application, U.S. Telecom 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 FCC or any state regulatory agency for failure to comply with any regulatory statute, rule or order.”

In Section 18 of the application, U.S. Telecom 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 CPSD

On March 7, 2011, pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure (Rules),¹ the Commission's Consumer Protection and Safety Division (CPSD) filed a protest to U.S. Telecom's CPCN application. CPSD asserted that the Applicant violated Rule 1.1 because its certifications in Sections 17 and 18 are false. CPSD asserts that the Applicant failed to report Federal Communications Commission (FCC) violations and sanctions as well as enforcement actions taken by other states. CPSD claims to have found three FCC slamming violations (Applicant changed a consumer's telecommunication service provider without obtaining authorization and verification from subscriber.) relating to the Applicant, dated January 31, 2006, July 23, 2004, and March 25, 2010.² CPSD also asserts it found a 2003 settlement agreement with a civil monetary penalty issued against the Applicant, in Iowa, in accordance with the provisions of Iowa's anti-slamming law.³

CPSD states it found a Notice of Unlawful Trade Practices and Assurance of Voluntary Compliance in Oregon, dated 2003, where a settlement was reached and Applicant agreed to pay \$18,000 without admitting to a violation concerning a violation of Oregon's no-call Statutes. Also CPSD claims to have found an Assurance of Voluntary Compliance with the Attorney General of Pennsylvania, dated 2003, who investigated the Applicant for violating the Consumer Protection Law and Telemarketing Act for soliciting consumers on the

¹ 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/RULES_PRAC/70731.pdf.

² Protest of CPSD to Application of U.S. Telecom, at 4.

³ *Id.*

Do-Not-Call list, failing to disclose the telemarketer's name; failing to disclose the telephone number and address of carriers and making statements that were false or misleading. Applicant entered settlement without admission of guilt, changed telemarketing procedures, and paid a civil penalty of \$70,000 and \$5,000 to be used for future consumer protection purposes.⁴

CPSD stated that it found a civil class action suit in the Superior Court of California, County of Los Angeles, filed in 2008, against U.S. Telecom Long Distance, Inc and other telecommunications companies. This action was brought by consumers based upon allegations of defendant's unfair and fraudulent business practice of "cramming" and "slamming." The Commission has received 60 consumer complaints regarding slamming and cramming since January 2009.⁵

3.2. Reply of U.S. Telecom Long Distance, Inc. to Protest

On March 24, 2011, U.S. Telecom filed a reply to the protest of the CPSD and filed a response to a CPSD Data Request. This was incorporated into their reply.

With regard to the FCC cases, U.S. Telecom stated that it had petitioned some recent rulings issued by the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau, FCC, stating that the Deputy Chief acted "arbitrarily and capriciously" by ruling against U.S. Telecom for insufficient verification when previous and concurrent rulings with the same

⁴ *Id.*

⁵ Protest of CPSD to Application of U.S. Telecom, at 5.

verification method were deemed sufficient. The FCC has not ruled on this petition yet.⁶

With regards to the state cases, U.S. Telecom states that the cases in Iowa, Oregon, Pennsylvania, and California never rose to the level of constituting “violations and sanctions as well as enforcement actions.” They state that all the cases ended with settlements, and therefore are not admissions of a violation. The California case is still in progress, although the Applicant has made motions to dismiss the suit.⁷

They state that in no case cited by CPSD has there been a sanction for “failure to comply with any regulatory statute, rule or order.”⁸

3.3. Prehearing Conference

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, U.S. Telecom may be affiliated with a company called CTP⁹ (later identified as Consumer Telecom, Inc., which has a pending Application (A.) 11-01-027). CPSD states that the affiliation was not disclosed in the application or in the Applicant’s response to the data request. U.S. Telecom objected to the CPSD assertions and indicated that there was no false or misleading information given in the application.¹⁰

⁶ Reply of U.S. Telecom to Protest of CPSD, at 4.

⁷ *Id.*

⁸ *Id.* at 5-6.

⁹ PHC Tr. 9:15-28.

¹⁰ PHC Tr. 13:10-18.

3.4. Motion to Withdraw

On June 24, 2011 the Applicant filed a Motion to withdraw its application. The Applicant stated that the information in its application was truthful and that it had made a good faith effort to comply with CPSD's requests for information. However the Applicant concluded that the "expenditure of time, resources and money necessary to defend its application no longer justifies the benefit of pursuing competitive local exchange service in California."¹¹

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 questionable business practices of U.S. Telecom.¹² CPSD believes that the Applicant's motion to withdraw should be granted with certain conditions including that in any future applications in California, the Applicant or any of its current directors, officers and/or owners of more than 10% of outstanding shares reference the existence of the Application (A.11-01-025), this Decision and the general reason for the CPSD protest and the fact that the Application was withdrawn after the protest was filed.¹³

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 conditions: The Applicant and/or

¹¹ U.S. Telecom Motion to Withdraw, at 1-2.

¹² CPSD Response to Motion to Withdraw, at 1.

¹³ *Id.*

any of its current officers, directors or owners of more than ten percent of its outstanding shares shall 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.

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.

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 Administrative Law Judge (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.

8. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and W. Anthony Colbert is the assigned 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 report FCC violations and sanctions as well as enforcement actions taken by several other states.
5. CPSD alleged it found a civil class action suit in the Superior Court of California, County of Los Angeles, filed 2008, against U.S. Telecom Long Distance, Inc and other telecommunications companies.
6. On March 24, 2011, U.S. Telecom filed a reply to the protest of the CPSD.
7. A Prehearing Conference 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 ten percent 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. U.S. Telecom Long Distance, Inc's Motion to Withdraw is granted.

2. U.S. Telecom Long Distance, Inc and/or any of its current officers, directors or owners of more than ten percent 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 Commission for authorization to provide telecommunications services in California.

3. U.S. Telecom Long Distance, 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 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.

4. Application 11-01-025 is closed.

This order is effective today.

Dated _____, at San Francisco, California.