

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Network
Communications International Corp.
a/k/a 1800Call4Less (U-6086-C) for a
Certificate of Public Convenience and
Necessity to Operate as a Provider of
Resold Interexchange Service Within
the State of California.

A.11-03-028
(Filed March 29, 2011)

**RESPONSE
OF THE CONSUMER PROTECTION AND SAFETY DIVISION
TO THE MOTION OF NETWORK COMMUNICATIONS
INTERNATIONAL CORP. A/K/A 1800CALL4LESS
FOR WITHDRAWAL OF APPLICATION;
AND THE CONSUMER PROTECTION AND SAFETY DIVISION'S
REQUEST FOR SANCTIONS**

I. INTRODUCTION AND SUMMARY OF POSITION

On August 29, 2011, Network Communications International Corp. a/k/a 1800Call4Less ("NCIC") filed a Motion to Withdraw its Application for Certificate of Public Convenience and Necessity. While Consumer Protection and Safety Division ("CPSD") does not oppose the Motion, CPSD makes two requests:

1. that in all future applications (if any), NCIC and any of its current directors, officers, or owners of more than 10% of outstanding shares be required to disclose these proceedings and the nature of CPSD's protest to the Application. In this case, CPSD uncovered evidence suggesting that Applicant violated Rule 1.1 twice by failing to disclose the fines imposed and settlements reached with three other state regulatory agencies. In addition, and contrary to the representations made in its Application, the Commission's Consumer Affairs Branch ("CAB") has received complaints against NCIC. CPSD has also uncovered complaints against

NCIC that were also posted on Rippoff Report.com regarding billing and cramming issues. Therefore, CPSD requests that the Commission require Applicant or any of its current directors, officers, or owners of more than 10% of outstanding shares to reference this application, CPSD's protest and the ruling granting withdrawal in any future applications for authorization to provide telecommunications services in this state.

2. that NCIC be sanctioned in the amount of \$2,000.00 for violating the confidentiality provisions of section 12 of the Commission's Rules of Practice and Procedure. It is clear that Rule 12.6 provides that all settlement discussions, admissions, concessions, and offers to settle are "confidential and shall not [be disclosed]... outside the negotiations without the consent of the parties participating in the negotiations." Notwithstanding that prohibition, NCIC's consultant, Robin Norton, disclosed the settlement discussions in her email to the assigned Administrative Law Judge ("ALJ") of August 15, 2011 without obtaining CPSD's consent to the disclosure. As it is important that the Commission's Rules of Practice and Procedure be adhered to and respected, CPSD requests that the Commission sanction NCIC.

II. PROCEDURAL BACKGROUND

NCIC is a Texas company incorporated on August 29, 1996¹ and operating in CA since 1998.² The Commission granted NCIC a certificate of public convenience and necessity ("CPCN") on November 9, 1998 to provide inter and intra Local Access and Transport Area ("LATA") telecommunications services in California.³ In the current Application, NCIC is seeking authority to provide resold interexchange services within California.

NCIC offers operator assisted service for transient customers and institutional service provided to inmates at correctional or confinement facilities for outward-only

¹ A.11-03-028, Section I, page 2

² A.11-03-028, Section III, page 3

³ D.98-11-036. The assigned Corporate Identification no. is U-6086-C.

calling.⁴ According to NCIC's website, the Applicant "...provides telecom solutions to Inmate facilities, Pay Phone owners, Hospitals, Hotels and Local Exchange Carriers."⁵ Its products include Inmate Phone Services, Live and Automated Telephone Operator Services, Directory Assistance, Conference Call Services, Telephone Validation and Local Exchange Billing Services.⁶

NCIC filed its Application on March 29, 2011. CPSD filed a Protest to the Application on May 20, 2011, alleging that NCIC made two false statements in the Application. Contrary to NCIC's statements, NCIC violated other state regulatory rules and has had complaints filed against it. Therefore, NCIC provided the Commission with two instances of false information in violation of Rule 1.1. In addition, CPSD's staff uncovered additional instances of consumer complaints that NCIC failed to disclose.

Following the prehearing conference, CPSD and NCIC engaged in settlement discussions that, ultimately, did not lead to the successful resolution of these proceedings. On August 15, 2011 @ 2:09 p.m., Robin Norton emailed assigned ALJ Myra Prestidge and outlined the substance of the settlement negotiations without first obtaining CPSD's consent to the disclosure. Because NCIC breached the confidentiality provision set forth in Rule 12.6 of the Commission's Rules of Practice and Procedure, CPSD recommends the Commission sanction NCIC pursuant to Public Utilities (PU) Code Section 2107 which provides that:

any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than twenty thousand dollars (\$20,000) for each offense.

⁴ A.11-03-028, Section VII, page 5

⁵ <http://www.ncic.com/>

⁶ Ibid

III. DISCUSSION

Pursuant to *In the Matter of Application of Cordia Communications Corp.*, D.07-10-023, CPSD believes that NCIC's Motion to Withdraw Application should be granted with certain conditions; namely, CPSD believes it would be a mistake to allow NCIC to refile this same application (using, for example, a different corporate DBA) in the future without any reference to these proceedings. Instead, CPSD requests that the Commission adhere to the course of action adopted in the *Cordia* case, wherein the Commission allowed the applicants to withdraw their application but required Cordia in future applications to disclose the fact that a previous application had been filed, and that CPSD had protested that application. The Commission granted the request noting that CPSD had documented that Cordia had a "history of consumer fraud, because the FCC had found that Applicant had engaged in unlawful slamming of customers on occasions in the past 3 years, and Applicant had failed to disclose these violations and the findings of the FCC in this application." (D.07-10-023, Finding of Fact 3.)⁷ Based on these circumstances, Ordering Paragraph 3 of D.07-10-023 required that:

Applicant, its officers, directors, and owners of more than 10% of outstanding shares, shall reference application, the protest of the Commission Consumer Protection and Safety Division and this decision in any future applications for authorization to provide telecommunications services in this state.

CPSD seeks the same limitation if NCIC's Motion is granted in this case. CPSD believes that NCIC, and any of its current directors, officers, or owners of more than 10% of outstanding shares should be required to disclose:

1. The existence of A.11-03-028.
2. The general reasons for CPSD's protest.
3. The fact of NCIC's withdrawal after CPSD's protest.

⁷ Also, in D.08-04-021, the Commission ordered that "Legacy Long Distance International, Inc., its officers, directors, and owners of more than 10% of outstanding shares, shall reference the protest of the Commission Consumer Protection and Safety Division, and this decision in any future application for authorization to provide telecommunications services in California."

NCIC should be required to disclose these facts if it files an application in the future, especially in light of the fact that CPSD had discovered that NCIC had failed to disclose in this application that it had been investigated and/or sanctioned in several other states.

Furthermore, NCIC should be sanctioned in the amount of \$2,000.00 for breaching the confidentiality of the settlement discussions in violation of Rule 12.6 pursuant to PU Code Section 2107.

IV. CONCLUSION

CPSD does not oppose Applicant's request for withdrawal. However, CPSD believes the request should not be granted "without prejudice" – which would allow NCIC to re-file the same application with no adverse impacts. Pursuant to *In the Matter of Application of Cordia Communications Corp.*, D.07-10-023, CPSD respectfully requests that the Commission require NCIC and any of its current directors, officers, or owners of more than 10% of outstanding shares to disclose in all future applications the facts behind this investigation, especially in light of the fact that one of the primary reasons for CPSD's Protest was that NCIC had not disclosed in this application that it had been investigated and/or sanctioned in prior administrative actions. Furthermore, CPSD requests that NCIC be sanctioned for violating Rule 12.6 pursuant to PU Code 2107.

Respectfully submitted,

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