Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Devine Communications, Incorporated, a California corporation, for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunications Service in California as a Switchless Reseller.	Application 06-11-001 (Filed November 1, 2006)

OPINION APPROVING ALL-PARTY SETTLEMENT BETWEEN THE CONSUMER PROTECTION AND SAFETY DIVISION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND DEVINE COMMUNICATIONS, INCORPORATED, AND GRANTING DEVINE COMMUNICATIONS' REQUEST FOR REGISTRATION AS A TELECOMMUNICATIONS CARRIER

Summary

This decision approves an All-Party Settlement Agreement (Settlement Agreement) pursuant to Rule 12 of the Commission's Rules of Practice and Procedure. It also grants the application of Devine Communications, Incorporated (Devine) for a certificate of public convenience and necessity to provide interLATA and intraLATA telecommunications service in California as a switchless reseller.

Background

Devine filed its application on November 1, 2006 pursuant to the registration process adopted in Decision (D.) 97-06-107 and related decisions. The application was amended twice for substantive reasons and a third time for the purposes of integrating and verifying the amendments. A protest to the

application was filed by the Commission's Consumer Protection and Safety Division (CPSD) on November 21, 2006.[1]

In order to protect consumers from the misleading sale of prepaid telephone services, the Commission adopted the Consumer Protection Initiative (CPI) Decision (D.06-03-013) in March 2006. The Commission works with the California Attorney General (AG) and other appropriate authorities "to investigate claims of failure to disclose appropriate information for prepaid calling cards." (D.06-03-013 at p. 42.) Consistent with the CPI, in October 2006, the Commission authorized staff to cooperate with the AG in investigating Devine as part of a larger effort to step up enforcement of rules pertaining to prepaid phonecards, or "telephone prepaid debit cards" as they are described in Pub. Util. Code §§ 885-86.

Under §§ 885-86, prepaid phonecard providers must register with the Commission under Pub. Util. Code § 1013. CPSD alleged that Devine was a prepaid phonecard provider that had failed to register with the Commission. During further investigation with the AG, CPSD also addressed concerns that Devine was selling prepaid phonecards without accurately disclosing all rates, fees, surcharges, terms, and conditions associated with use of the cards, as required by Business & Professions (B&P) Code § 17538.9. On the basis of their investigation, CPSD and the AG drafted a complaint alleging violations of Pub. Util. Code § 885-86 and B&P Code § 17538.9, including failure to register and failure to accurately disclose the company's name, rates, and surcharges.

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[1] CPSD filed an amendment to that protest, correcting the wording of the caption on the protest filing, on January 10, 2007.

Settlement discussions between Devine, CPSD, and the AG led to agreement, as reflected in the following documents: (1) a Stipulation for Entry of Final Judgment and Permanent Injunction, which was approved and ratified by the Commission April 12, 2007; (2) an All-Party Settlement resolving the issues in this particular protested application proceeding; and (3) a Declaration, executed by Devine's principal, Douglas S. Devine, averring that certain representations made to AG and CPSD were true and correct.

Following the approval of the Stipulation, the AG and CPSD filed the complaint against Devine in the San Francisco Superior Court, and presented the Court with the Stipulation and Proposed Judgment. The Proposed Judgment contained an injunction prohibiting Devine from "advertising, issuing, distributing, marketing, selling, or otherwise offering Prepaid Calling Cards or any other telecommunications service in California without first obtaining a valid certificate of public convenience and necessity from the Commission." (Joint Motion at Appendix A, p. 3.) In addition, Devine was ordered to pay $118,000 in civil penalties divided evenly between the AG and CPUC, and ordered not to advertise, issue, distribute, market, sell, or otherwise offer Prepaid Calling Cards in California until these penalties are paid in full. (*Id.* at Appendix A, p. 4, 6-7).

The Superior Court entered the Judgment pursuant to the Stipulation of the parties on April 13, 2007. Now that the Court has entered the Judgment and Devine has addressed CPSD's concerns, CPSD has filed a withdrawal of its Protest to Devine's application and moves jointly with Devine for the approval of the Settlement Agreement.

The Settlement Agreement

Summary

The Settlement Agreement does the following: it sets out the conditions for CPSD's withdrawal of its Protest; it memorializes that Devine has stipulated to a judgment in the civil action; it memorializes Devine's agreement that failure to pay civil penalties required by the judgment may subject it to revocation of its license to operate; and it memorializes Devine's agreement to identify this Settlement and concomitant Stipulated Judgment in any future Commission Application. A copy of the Settlement Agreement is attached as Appendix A.

Adoption of the Settlement Agreement

Before we may approve a settlement agreement, we must determine that it meets the requirements of Commission Rule 12.1(d), in that it is 1) reasonable in light of the whole record, 2) consistent with law, and 3) in the public interest. The All-Party Settlement Agreement meets these requirements, and we therefore approve it.

First, the Settlement Agreement is reasonable in light of the whole record. We have previously found that a proposed settlement is reasonable if it saves the Commission significant expenses and use of its resources, when compared to the risk, expense, complexity, and likely duration of further proceedings. (In re Southern California Gas Co., D.00-09-034, pp. 20-21). While the Settlement Agreement does not require Devine to admit culpability or wrongdoing, it does appropriately require Devine to comply with California law governing telecommunications carriers and file an application for registration and pay civil penalties.

The Settlement Agreement also reaffirms the Commission's authority to oversee and regulate the prepaid phonecard industry, and to register both

prepaid and postpaid resellers of telecommunications service. Devine's application for registration demonstrates its intention to comply fully with California law in the future. Finally, the Settlement Agreement resolves this matter in a way that will save the Commission time, expense, and resources that would otherwise be committed to administrative hearings and resolution of contested issues. Based on its approval of the Stipulation and Judgment, the Commission has signaled its opinion that the civil penalty, which represents a substantial portion of net revenues earned by Devine, is reasonable.

Since the Settlement Agreement reaches a solution that ensures Devine will comply with Pub. Util. Code §§ 885-86 and B&P Code §§ 17200, 17500, and 17538.9; that requires Devine to pay civil penalties; and that saves the Commission the expense and resources involved in proceeding with the complaint and investigation, we find that it is reasonable in light of the whole record.

Second, the Settlement Agreement is consistent with law. The Settlement Agreement is consistent with the registration requirements and disclosure laws in Pub. Util. Code §§ 885-56 and B&P Code §§ 17200, 17500, and 17538.9. The disclosure requirements in the Judgment were designed to tailor the injunction to requirements of the statute and specific business practices at issue in the Devine case. The Settlement Agreement allows Devine to operate in a lawful manner and does not bless an unlawful arrangement.

The Settlement Agreement both penalizes Devine and requires that Devine comply with California law with provisions that should Devine fail to comply or pay the civil penalties, CPSD may refile a Protest and/or the Commission may suspend or revoke any license issued.

The Settlement Agreement preserves Commission jurisdiction over this matter, is governed by the laws of California, is intended to enforce California law, and does not violate any existing statutes. We therefore find that the Settlement Agreement is consistent with law.

Third, the Settlement Agreement is in the public interest. The Commission's previous decision in the CPI indicates the importance of enforcing statutes intended to ensure that telecommunications carriers do business fairly and legitimately. Furthermore, since phonecard providers often target insular and vulnerable minority populations, enforcement of such statutes, as reflected in the Stipulation and Judgment, is in the public interest. The CPSD states that it believes that the Settlement Agreement, along with the Stipulation and Judgment entered by the San Francisco Superior Court, sends a message to consumers and the industry that accountability and fair dealing will be required in the future, and we agree. The Settlement Agreement was part of negotiations between CPSD and Devine and enforces existing regulations designed to protect consumers, and we therefore find that it is in the public interest.

Because we find that the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest, it meets each of the three criteria for approval, and should be approved. Concurrent with the Settlement Agreement's approval, this proceeding should be closed.

Granting of Devine's Telecommunications Carrier Application

The Settlement anticipates that upon CPSD's withdrawal of its protest, the application will be processed by the Commission "under its normal procedures." Upon review of Devine's application, we grant their registration request.

While Devine was not initially qualified to use the registration process, it has now established such qualification (subject to the conditions imposed herein

and in the Settlement Agreement). It has, through amendment of its application, complied with the filing requirements for a registration application. On December 6, 2006, Devine filed an amendment to add a correct agent for service of process. Again, on April 4, 2007, Devine filed a lengthier amendment pursuant to discussions with the CPSD.

These amendments followed an initial protest filed by the CPSD on November 21, 2006, and the amended protest filed on January 10, 2007. The protest was filed because: (1) Devine had been under investigation by the CPSD and AG; (2) Devine had failed to file an application to register with the Commission for several years despite a warning by the Commission staff in July 2000 that registration requirements applied to sellers of prepaid phonecard service; (3) Devine's application originally failed to disclose the fact that the AG had been investigating Devine for potential violations of California false advertising laws and other consumer protection statutes; and (4) Devine had failed to disclose in its application the existence of an affiliate corporation, Megalink Telecom, Inc., through which it accomplished a good portion of its phonecard business (Protest, at 1-2).

A final amendment to the application, which integrated the changes made to the amended application and contained the updated signature of the company's principal Mr. Douglas Devine as verification of the application as a whole, was filed on July 26, 2007. Pursuant to the portion of this decision approving the Settlement Agreement, the CPSD protest has been withdrawn.

The draft tariffs submitted were not rejected by the Commission's Communications Division. Therefore, pursuant to the authority granted to the Executive Director by D.97-08-050, the applicant should be granted a certificate

of public convenience and necessity to provide this service, subject to the conditions appended to this decision.

Waiver of Comment Period

This is now an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Devine Communications, Incorporated, filed the application on November 1, 2006, and the application appeared in the Commission's Daily Calendar on November 3, 2006.

2. The Consumer Protection and Safety Division of the California Public Utilities Commission filed a timely protest on November 21, 2006, and this protest was amended on January 10, 2007.

3. CPSD and the AG filed an official complaint in the San Francisco Superior Court against Devine, alleging violations of Pub. Util. Code §§ 885-86 and B&P Code § 17538.9 on April 12, 2007.

4. Prior to filing the complaint, the CPSD and AG met and reached agreement reflected in a Stipulation for Entry of Final Judgment and Permanent Injunction, an All-Party Settlement resolving the issues in this protested application, A.06-11-001, and a Declaration executed by Devine's principal, Douglas S. Devine, averring that certain representations made to AG and CPSD were true and correct.

5. The Commission approved the Stipulation on April 12, 2007.

6. The AG and Commission Staff presented the San Francisco Superior Court with the Stipulation and Proposed Judgment on April 12, 2007.

7. The Superior Court entered the Judgment pursuant to the Stipulation of the parties on April 13, 2007.

8. CPSD has withdrawn its timely protest to this application.

9. CPSD and Devine jointly move for approval of an All-Party Settlement Agreement intended to resolve the issues raised by the protest against Devine's carrier application.

10. The draft tariffs were not rejected by the Commission's Communications Division.

Conclusions of Law

1. The All-Party Settlement Agreement between the Consumer Protection and Safety Division of the Commission and Devine Communications is reasonable in light of the whole record.

2. The Settlement Agreement is consistent with law.

3. The Settlement Agreement is in the public interest.

4. The Settlement Agreement should be approved.

5. Devine should be granted the requested certificate of public convenience and necessity subject to the conditions in attached appendices A-D.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement, attached hereto as Exhibit A, shall be approved.

2. A certificate of public convenience and necessity is granted to Devine Communications, Incorporated to provide InterLATA and IntraLATA telecommunications service in California as a switchless reseller subject to the conditions set forth in attached Appendices A-D. Applicant is assigned corporate identification number U7053C which shall be included in the caption of all filings made with this Commission.

3. Any default on Devine's payment obligations under the Judgment entered in the Superior Court on April 12, 2007, may be grounds for the immediate suspension and/or revocation of any operating authority or license granted to it by this Commission, including but not limited to its authority to offer prepaid ANI services, as described in the Settlement Agreement.

4. The Consumer Protection and Safety Division (CPSD) shall monitor Devine's payments and compliance with the Judgment and the Settlement Agreement. CPSD shall immediately notify the Commission's Executive Director in the event that Devine fails to comply with the Judgment or Settlement Agreement so that the Commission may begin proceedings to consider whether to suspend or revoke Devine's license or operating authority.

5. Application 06-11-001 is closed.

This order is effective today.

Dated_____, at San Francisco, California.