

Decision 09-11-010 November 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Cheap2Dial Telephone, LLC for Registration as an Interexchange Carrier Telephone Corporation Pursuant to the Provisions of Public Utilities Code Section 1013.

Application 08-09-020
(Filed September 18, 2008)

**DECISION ADOPTING SETTLEMENT AGREEMENT
AND GRANTING APPLICATION FOR REGISTRATION**

Summary

This decision adopts the proposed Settlement Agreement¹ (Settlement Agreement) attached hereto as Appendix D and grants a registration Certificate of Public Convenience and Necessity to Cheap2Dial Telephone, LLC to provide services in California as a non-dominant interexchange carrier. Among other things, the Settlement Agreement requires Applicant to pay a penalty of \$10,000 to the General Fund and required surcharges, fees, and interest that it owed to the Commission, totaling \$3,108.43,² and to file any and all reports on a timely basis going forward. This proceeding is closed.

¹ The Settlement Agreement resolves the issues set forth in the only protest filed in this proceeding as well as other issues discovered by the parties during the course of this proceeding.

² On May 9, 2009, Applicant paid \$2,825.86 in surcharges and fees for the period of July 1, 2007 through December 31, 2008. The interest payment of \$282.57 is unpaid and

Footnote continued on next page

1. Background

On September 18, 2008, Cheap2Dial Telephone, LLC (Applicant) filed an application pursuant to Pub. Util. Code³ § 1013 and the registration process adopted in Decision (D.) 97-06-107 and related decisions for registration as an interexchange carrier and authority to do business as a switchless reseller of long-distance service in California. Applicant is qualified to use the registration process and has complied with the filing requirements for a registration application.

On October 27, 2008, the Commission's Consumer Protection and Safety Division (CPSD) filed a protest to the Application based on concerns that Applicant had (1) been unlawfully operating in California as a telephone corporation without a license for 15 months and (2) made misrepresentations to the Commission on the Commission's short form application, in violation of Rule 1.1 by failing to disclose a previous sanction by the Ohio Public Utilities Commission (PUC) for failure to file a detariffing application.

On June 2, 2009, CPSD and Applicant filed a joint motion (Motion) for adoption of the Settlement Agreement. The Motion and the Settlement Agreement provide that Applicant has provided satisfactory explanations concerning CPSD's protest and the terms of the Settlement Agreement satisfactorily address all of CPSD's concerns – and therefore, CPSD no longer has

Applicant has agreed to pay that amount pursuant to the payment schedule described in Section II-1-1.8 of the Settlement Agreement.

³ Unless otherwise indicated, all references to Code sections in this decision refer to the California Public Utilities Code and references to Rule or Rules refer to the Commission's Rules of Practice and Procedure.

concerns regarding Applicant's fitness to provide service in California. The Motion requests the Commission's adoption of the Settlement Agreement and

issuance of a registration Certificate of Public Convenience and Necessity (CPCN) to Applicant to provide services in California as a non-dominant interexchange carrier.

Other than CPSD's protest which would be resolved once the Settlement Agreement is adopted by this decision, there has been no other opposition to the application.

2. Settlement Agreement

The Settlement Agreement and the Joint Motion address the issues raised by the CPSD's protest. For Applicant's 15 months of unlawful operation in California (without the required CPCN pursuant to the Code sections 1001 *et seq.*), the Settlement Agreement contains Applicant's acknowledgement of those unlawful acts and requires Applicant's payment of all outstanding fees, surcharges and penalties, including interest. The Joint Motion addresses Applicant's non-disclosure on the short form application, including the related Rules 1.1 violation raised in the CPSD's protest. Applicant acknowledges and explains that it did not believe that it was sanctioned by the Ohio PUC, because it had subsequently filed the required documents. The Joint Motion indicates that CPSD accepts this explanation. As discussed herein, while these concerns raise questions as to Applicant's overall fitness to provide services in California as a non-dominant interexchange carrier and to comply with all of the regulatory mandates, the Settlement Agreement and the Joint Motion satisfactorily resolve those concerns.

3. Discussion

Rule 12.1(d) provides that, before approving a settlement, the Commission must determine that the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. We find that the Settlement Agreement fully satisfies these requirements and therefore should be approved.

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.* (1999) D.00-09-034, 2000 Cal. PUC LEXIS 694, at p. 29. Generally, the parties' evaluation should carry material weight in the Commission's review of a settlement. *See Id.* at 31. Here, CPSD indicates that it is completely satisfied that the Settlement Agreement fully resolves all of the concerns raised in its protest and further argues that the Settlement Agreement adoption would be in the public interest. We agree. The Settlement Agreement does the following:

1. It shows unequivocal acknowledgement of CPSD's concerns by Applicant, the history of cooperation by Applicant in addressing the issues raised by the CPSD during the course of this proceeding, and Applicant's commitment to comply with all regulatory matters going forward;
2. It shows Applicant's commitment to remit all outstanding fees and surcharges currently owed to the Commission, as well as a penalty payment to the California General Fund;
3. The terms and conditions it imposes upon Applicant allow Applicant to continue to serve its customers. It provides the Commission with necessary assurances that in the future, Applicant will comply with its regulatory obligations. It imposes a \$10,000 penalty for the unlawful operations to date, will provide sufficient deterrence to Applicant from engaging in

- future violations for which further penalties will be imposed by the Commission;
4. It requires Applicant to remit to the Commission all outstanding fees and surcharges, plus interest, totaling \$282.57;⁴
 5. It requires Applicant to remit to the Commission all future fees, surcharges and mandated reports in a timely fashion;
 6. It upholds, preserves, and defends the integrity of the Commission's licensing process, requiring carriers to seek authority before commencing intrastate service, by imposing a penalty for violations; and
 7. It saves the Commission the further expense and commitment of resources involved in possible hearings of the questions of the violations set forth in CPSD's protest and the degree of culpability associated with same.

As a result of the Settlement Agreement, the Commission finds that the public will benefit by the increase in funds to the Commission's public purpose programs for which the collected outstanding fees and surcharges will be applied. The Settlement Agreement is consistent with existing law. Additionally, the terms of the Settlement Agreement are consistent with precedent established by other settlement agreements that the Commission has approved based on similar factual situations.

The proposed Settlement Agreement is an all-party settlement as CPSD and Applicant are the only two parties in this proceeding. The settling parties reasonably reflect the affected interests. The Parties have had sufficient opportunity to review and discuss the terms of the Settlement Agreement. All issues raised by the CPSD's protest to the Application have been resolved in the

⁴ On May 9, 2009, Applicant paid \$2,825.86 in surcharges and fees for the period of July 1, 2007 through December 31, 2008.

Settlement Agreement. The draft tariffs submitted with the Application were not rejected by the Commission's Communications Division. Therefore, the Settlement Agreement is found to be reasonable and in the public interest and therefore should be adopted. Accordingly, we adopt the Settlement Agreement and Applicant is granted a registration CPCN consistent with the terms and conditions set forth in the Settlement Agreement.

4. Waiver of Comment Period

This decision adopts the Settlement Agreement resolving all of the issues raised by the sole protest in this proceeding. Thus, although the protest is pending, in light of the Settlement Agreement we adopt here, this decision should be considered an uncontested matter, and as such, no comment period should be required. Moreover, all parties to this proceeding have waived the 30-day period for public review and comment, if such comment period should apply. Therefore, pursuant to Section 311(g), we find that the 30-day comment period for public review and comment is not required for our adoption of this Settlement Agreement and issuance of the requested CPCN.

5. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Kimberly H. Kim is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Applicant is qualified to use the registration process for registration as an interexchange carrier telephone corporation pursuant to the provisions of Pub. Util. Code § 1013.

2. There is currently no opposition to granting this application, in light of the proposed all-party Settlement Agreement filed in this proceeding.

3. The proposed Settlement Agreement by and between Applicant and CPSD resolves all issues raised by CPSD's protest in this proceeding.

4. The draft tariffs submitted by Applicant were not rejected by the Commission's Communications Division.

Conclusions of Law

1. The proposed all-party Settlement Agreement filed in this proceeding, including all of its terms and conditions, is reasonable in light of the whole record, and consistent with the law, and its adoption would be in the public interest.

2. The proposed all-party Settlement Agreement, attached hereto as Appendix D, should be approved and adopted.

3. Cheap2Dial Telephone, LLC should be granted a registration CPCN subject to the conditions set forth in the attached Settlement Agreement and appendices.

O R D E R

IT IS ORDERED that:

1. The proposed all-party Settlement Agreement, attached hereto as Appendix D, is approved and adopted.

2. A registration Certificate of Public Convenience and Necessity is granted to Cheap2Dial Telephone, LLC to provide interexchange services in California subject to the conditions set forth in the attached appendices.

3. The registration Certificate of Public Convenience and Necessity granted in the preceding ordering paragraph shall not become effective until the payments of \$282.57 required by Section II-1-1.8 and the first \$5,000 payment required by Section II-1-1.9 of the Settlement Agreement have been made.

4. Cheap2Dial Telephone, LLC is assigned corporate identification number U-7157-C which shall be included in the caption of all filings made with this Commission.

5. Application 08-09-020 is closed.

This order is effective today.

Dated November 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

APPENDIX A

NON-DOMINANT INTEREXCHANGE CARRIER REGISTRATION

1. If you requested confidential treatment of the financial portions of your application, it was granted and those materials will remain under seal for one year from the date of the decision. If you wish to continue the seal on those materials beyond the one-year period, you must make a formal request no later than 30 days prior to the expiration of the year explaining the reasons why you believe such extension is necessary.

2. You are subject to the following fees, and you must remit them regularly. Per the instructions in Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted, even if the amount due is \$0.

- a. The current 1.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, effective April 1, 2007);
- b. The current 0.20% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; Resolution T-17127 effective January 1, 2008);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.18% of gross intrastate revenue for the 2007-2008 fiscal year (Resolution M-4819);
- d. The current 0.13% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-17128, effective January 1, 2008);

- e. The current 0.25% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F; D.07-12-054);
- f. The current 0.25% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Advances Services Fund (D.07-12-054); and
- g. The current 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (set by Resolution T-17142, effective June 1, 2008).

These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, you should check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on your end-user bills until further revised.

- 3. You are exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure.
- 4. You are exempt from Pub. Util. Code §§ 816-830.
- 5. You are exempt from Pub. Util. Code § 851 when the transfer or encumbrance serves to secure debt.
- 6. You shall file a written acceptance of the certificate granted in this proceeding with the Director of the Communications Division.
 - a. You are authorized to file with this Commission tariff schedules for the provision of the services granted in your certificate of public convenience and necessity (CPCN). You may not offer these services until tariffs are on file. Your initial filing shall be made in accordance with General Order 96-B (D.07-01-024) and the Telecommunications Industry Rules (D.07-09-019) as a Tier II advice letter filing, and shall be effective not less than one day after filing. You shall comply with the provisions in your tariffs.

b. The effectiveness of your future tariffs is subject to General Order 96-B and the Telecommunications Industry Rules.

7. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as noted above.

8. Applicant shall file a service area map as part of its initial tariff.

9. Prior to initiating service, you shall provide the Manager of the Commission's Consumer Affairs Branch with your designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number(s). This information shall be updated if the name or telephone number changes, or at least annually.

10. You shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

11. You shall keep your books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

12. In the event your books and records are required for inspection by the Commission or its staff, you shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to your office.

13. You shall file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis, using the information request form developed by Commission staff and contained in Appendix B. You shall file an annual affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis, using the form developed by the Commission staff and contained in Appendix C.

14. You shall ensure that your employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

15. 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.

16. Pub. Util. Code § 708 requires public utilities to provide ID badges to all employees with a format specified in that Section, and employees to present that badge when they request entry to customer or subscriber premises. You shall send a letter to the Director of the Communications Division within 60 days of the effective date of this order declaring that you have issued the required badges.

17. If you are 90 days or more late in filing an annual report or in remitting the fees listed above, Communications Division shall prepare for Commission consideration a resolution that revokes your CPCN, unless you have received the written permission of Communications Division to file or remit late.

18. If your company is planning to discontinue service or to file for bankruptcy, you are required to contact the Bankruptcy Coordinator in the Communications Division immediately. Please ask us for instructions in your particular circumstances; our rules are designed to ensure that your telecommunications customers receive adequate notice and are minimally inconvenienced. Your compliance is necessary so that you are not penalized for failure to follow Commission rules.

19. Beginning December 6, 2004, you must abide by the Consumer Protection Rules contained in General Order 168.

(END OF APPENDIX A)

APPENDIX B

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original hardcopy and a machine readable electronic copy using Microsoft Word or compatible format of the information requested in **Appendix B page 2** no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

Director, Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

If you have any question concerning this matter, please call (415) 703-2883.

Information Requested of California Interexchange Telephone Utilities.

To be filed with the Director, Communications Division, California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility.
State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF APPENDIX B)

APPENDIX C

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.
 - Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
 - Brief description of business activities engaged in;
 - Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
 - Ownership of the utility (including type and percent ownership);
 - Corporate officers.
2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries listed in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (e.g., a subsidiary that in turn is owned by another subsidiary or and/or affiliate in the lower levels. Any regulated subsidiary should be clearly noted.
3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariffed services.
4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.
5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section 1-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF APPENDIX C)

[D0911010 Appendix D](#)