

Decision 10-09-036 September 23, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Krush Communications, LLC for Registration as an Interexchange Carrier Telephone Corporation Pursuant to the Provision of Public Utilities Code Section 1013.

Application 10-05-021
(Filed May 20, 2010)

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

1. Summary

This decision adopts the proposed Settlement Agreement between the Consumer Protection and Safety Division and Krush Communications, LLC, (Krush) and grants a registration license to Krush to provide services in California as a prepaid phone card provider and interexchange carrier on a detariffed basis. Among other things, the Settlement Agreement requires Krush to pay a penalty of \$7,500 to the General Fund and to comply fully with all applicable regulatory and legal requirements.

2. Background

Krush Communications, LLC (Krush) has been offering prepaid phone products (collectively, prepaid phone cards) for sale in California since November 2007, without authorization from the Commission. On May 20, 2010, Krush filed Application (A.) 10-05-021, requesting registration to operate as a switchless reseller of interexchange telecommunications services in California on a detariffed basis. In its application, Krush filed selected financial information

under seal, pursuant to Decision (D.) 97-09-035. Notice of A.10-05-021 appeared on the Commission's Daily Calendar on May 27, 2010.

On June 10, 2010, the Commission's Consumer Protection and Safety Division (CPSD) and Krush filed a *Protest of the Consumer Protection and Safety Division to the Application of Krush Communications, LLC, and Joint Motion to Adopt Settlement Agreement* (Protest and Motion). Prior to filing the Protest and Motion, CPSD and Krush met and negotiated a settlement that addressed Krush's request and CPSD's concerns.

CPSD's protest alleged that Krush had been operating in California as a phone card provider without registering with the Commission, pursuant to Public Utilities (Pub. Util.) Code §§ 885-886 and 1013. In its protest, CPSD also recommended that the Commission consider imposing a monetary penalty due to Krush's violation of California regulations regarding the provision of telecommunications services.

Krush, a Florida corporation, is registered with the California Secretary of State to operate in California as a foreign corporation. Krush's principal place of business is located at 1064 E. Brandon Blvd. Suite A, Brandon, Florida 33511.

3. Terms of Settlement Agreement

The proposed Settlement Agreement includes: 1) an acknowledgement by Krush that it failed to obtain the required authority prior to selling its prepaid calling cards in California; 2) a commitment to fully comply with all regulatory obligations; and 3) a penalty of \$7,500, to be paid by Krush in three monthly installments of \$2,500 each.

4. Discussion

4.1. Settlement

We review this uncontested settlement pursuant to Rule 12.1(d) of the Commission's Rules of Practice and Procedure,¹ which provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest." We have historically favored settlements that are fair and reasonable in light of the record as a whole.

CPSD and Krush are the only parties to A.10-05-021, and represent the only affected interests. Nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission decisions. Krush's application, the Protest and Motion, and the Settlement Agreement, provide sufficient information for the Commission to assess the reasonableness of the Settlement Agreement. Nothing in the settlement contravenes the law, Krush accepts the authority of the Commission, and agrees that it will meet its regulatory and legal obligations and responsibilities in California. Although Krush maintains that its failure to comply with our regulations was inadvertent, it acknowledges that it did fail to comply, and as a result, it will pay a fine to the General Fund.

The Settlement Agreement resolves a potentially time-consuming and disruptive dispute and avoids ensuing litigation. The benefits to the public, including the payment to the General Fund, and avoidance of litigation, clearly outweigh the costs of continued litigation with its associated expense and uncertainty of outcome.

¹ All statutory references are to the Commission's Rules of Practice and Procedure unless otherwise noted.

We conclude that the Settlement Agreement is reasonable in light of the record as a whole, consistent with law, and in the public interest. Accordingly, we adopt the Settlement Agreement, and Krush is granted a registration license as a prepaid phone card provider and interexchange carrier on a detariffed basis, consistent with the terms and conditions set forth in the Settlement Agreement and the order herein.

On September 2, 2010, the Commission adopted D.10-09-017 which established new criteria for applicants who seek authority through the registration process to provide communications services as a non-dominant interexchange carrier. For example, D.10-09-017, Ordering Paragraph 5 requires that:

New registration license applicants applying for the first time which have not previously reported revenues or submitted surcharges to the Commission must obtain a performance bond in the amount of \$25,000 for the first year. In the affidavit included in its application, the registration applicant must attest to the amount of the bond that will be obtained and that the required performance bond will be executed within five business days after the effective date of the issuance of a registration license. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond.

In addition, Ordering Paragraph 15 requires:

A minimum annual user fee for registration license holders is established and set at \$100. Registration license holders must pay an annual user fee based on the Commission-established rate in effect at the time (currently 0.18% of gross intrastate revenue) or \$100, whichever is greater.

Because Krush sought its authority through the registration process, these criteria also apply to Krush and are incorporated herein.

4.2. Requirements for Registration

4.2.1. Financial Qualifications

To be granted an application for registration, an applicant for authority to provide resold interexchange services must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent to meet the firm's start-up expenses.² An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.³ Applicant provided a bank statement and balance sheet, demonstrating that it has sufficient cash to satisfy the financial requirement.

4.2.2. Technical Qualifications

Applicants for NDIEC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its management that demonstrates that it possesses sufficient experience and knowledge to operate as a telecommunications provider.

Except as noted below, Krush represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with any telecommunications

² The financial requirement for non-dominant interexchange carriers (NDIEC) is contained in D.91-10-041.

³ For NDIECs, the requirement is found in D.93-05-010.

carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

In its application, Krush disclosed that the Florida Public Service Commission (FPSC) opened a proceeding against it and other registered IECs related to non-payment and/or delinquent payment of selected state regulatory assessment fees.⁴ The FPSC closed the proceeding on July 22, 2009 as it pertained to Krush, and found that Krush had paid all applicable fines. Since the issue before the FPSC has been resolved, we find that Krush is in compliance with the requirements for registration as a NDIEC.

4.2.3. Detariffed Rates

Krush intends to provide services on a detariffed basis. Krush must comply with all General Order 96-B – Telecommunications Industry Rules (Telecommunications Rules)⁵ in regards to the provision of detariffed services, including but not limited to: 1) the posting of all detariffed rates, terms, and conditions of service on an internet site pursuant to Rule 5.2 of the Telecommunications Rules; and 2) the notification of affected customers for any service not provided under tariff, of higher rates or charges, more restrictive terms or conditions, withdrawal of service, or transfer of ownership or customer base, pursuant to Rule 5.3 of the Telecommunications Rules.

⁴ FPSC Proceeding Number 090300-TI.

⁵ Authorized in D.07-09-019.

4.2.4. California Environmental Quality Act (CEQA)

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant will not be constructing any facilities for the purpose of providing services. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment.

5. Request to File Under Seal

Pursuant to D.97-09-035,⁶ Krush filed Attachment F to the application as confidential materials under seal. Attachment F includes Krush's financial reports and bank statement. We have granted similar requests in the past and do so here.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. 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.

7. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Seaneen M. Wilson is the assigned Administrative Law Judge in this proceeding.

⁶ In D.97-09-035, the Commission ordered that qualifying financial information submitted in support of a registration application by an NDIEC may be submitted under seal.

Finding of Facts

1. The proposed Settlement Agreement by and between CPSD and Krush resolves all issues raised by CPSD's protest in this proceeding.
2. Krush has sold prepaid phone cards in California since November 2007 without obtaining the necessary authority from the Commission.
3. Krush intends to provide services on a detariffed basis to the extent permitted by the Telecommunications Rules authorized in D.07-09-019.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the record as a whole, consistent with law and in the public interest.
2. Krush should be granted a registration license as a prepaid phone card provider and interexchange carrier on a detariffed basis, subject to the conditions of the Settlement Agreement and the order herein.
3. Krush should pay \$7,500 to the General Fund of the State of California in three monthly installments of \$2,500 each, starting within 30 days of the date of issuance of this decision, and each subsequent payment 30 days after that.
4. Krush, once granted a registration license, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
5. Krush should be authorized to provide services on a detariffed basis to the extent permitted by the Telecommunications Rules authorized in D.07-09-019.

O R D E R

IT IS ORDERED that:

1. The proposed all-party Settlement Agreement between the Consumer Protection and Safety Division and Krush Communications, LLC is adopted.
2. A registration license is granted to Krush Communications, LLC to operate as a prepaid phone card provider and provider of interexchange services in California on a detariffed basis, subject to the conditions set forth in the Settlement Agreement.
3. Krush Communications, LLC must pay to the General Fund of the State of California the sum of \$7,500, in three monthly installments of \$2,500 each, starting within 30 days of the date of issuance of this decision, and each subsequent payment 30 days after that. The fine must be paid by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Write on the face of the check or money order "for deposit to the General Fund per Decision 10-09-036."
4. Krush Communications, LLC is authorized to provide services on a detariffed basis to the extent permitted by General Order 96-B - Telecommunications Industry Rules authorized in Decision 07-09-019. Accordingly, Krush Communications, LLC must post all detariffed rates, terms, and conditions of service on an internet site pursuant to General Order 96-B - Telecommunications Industry Rule 5.2. Krush Communications, LLC must notify affected customers, for any service not provided under tariff, of higher rates or charges, or more restrictive terms or conditions or withdrawal of service

or transfer of ownership or customer base pursuant to General Order 96-B - Telecommunications Industry Rule 5.3.

5. The corporate identification number assigned to Krush Communications, LLC, U-7200-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments A, B, and C to this decision, Krush Communications, LLC is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. Krush Communications, LLC must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

8. Krush Communications, LLC must submit an Information-Only advice letter to the Director of the Communications Division containing a copy of its executed performance bond at least annually not later than March 31. Within five business days after the effective date of this decision, Krush Communications, LLC must submit an Information-Only advice letter to the Director of the Communications Division containing a copy of its executed bond.

9. Krush Communications, LLC must not allow its performance bond to lapse during any period of its operation. During all periods of operation Krush Communications, LLC must continue to possess the requisite legal, technical, and financial qualifications.

10. Krush Communications, LLC must annually pay the user fee and public purpose surcharges specified in Attachment A. Per the instructions in Exhibit E

to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers must report user fees even if the amount due is \$0.

11. Prior to initiating service, Krush Communications, LLC must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

12. Krush Communications, LLC must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

13. Krush Communications, LLC must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment B to this decision.

14. Krush Communications, LLC must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment C.

15. Application 10-05-021 is closed.

This order is effective today.

Dated September 23, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

Commissioner John A. Bohn, being
necessarily absent, did not participate.

ATTACHMENT A

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant must file, in this docket with reference to this decision number,⁷ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to 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 1.150% 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, dated March 1, 2007, effective April 1, 2007);
- b. The current 0.200% 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; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.180% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007, or \$100, whichever is greater;
- d. The current 0.110% 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 at 3-4,

⁷ Written acceptance filed in this docket does not reopen the proceeding.

- App. B, Rule 1.C; Resolution T-17259, dated April 8, 2010, effective May 1, 2010);
- e. The current 0.450% surcharge (effective December 1, 2009) 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 at 191, App. B, Rule 6.F.; D.07-12-054, Resolution T-17215, dated October 15, 2009, effective December 1, 2009.);
 - f. The current 0.000% 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 Advanced 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 (D.96-10-066 at 88, App. B, Rule 8.G; Resolution T-17142, dated April 29, 2008, effective June 1, 2008).

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

3. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of GO 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

5. Applicant must file a service area map as part of its initial tariff.

6. Applicant must submit an Information-Only advice letter to the Director of the Communications Division containing a copy of its executed performance bond at least annually not later than March 31. Within five business days after the effective date of this decision, Applicant must submit an Information-Only

advice letter to the Director of the Communications Division containing a copy of its executed bond.

7. Applicant must not allow its performance bond to lapse during any period of its operation. During all periods of operation Applicant must continue to possess the requisite legal, technical, and financial qualifications.

8. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

9. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

10. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.

11. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

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

13. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

14. Applicant must file an 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 contained in Attachment D.

15. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

16. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

17. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's registration license.

18. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure.

19. Applicant is exempt from Pub. Util. Code §§ 816-830.

20. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

21. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.

22. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT A)

ATTACHMENT B

ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 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.

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

Required information:

1. Exact legal name and U # of the 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. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. 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.
12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT B)

ATTACHMENT C

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 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. Each utility must 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)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must 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 and/or affiliate) in the lower levels. Any regulated subsidiary must 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 tariff 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 I-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 that 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 ATTACHMENT C)