PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-251
Administrative Law Judge Division
May 6, 2010

R E S O L U T I O N

RESOLUTION ALJ-251 Affirming Citation Forfeitures 161, 162, 163, 164, and 165 and Denying Citation Forfeitures 157 and 159 Issued to Clear World Communications Corporation.

SUMMARY

This resolution resolves Clear World Communications Corporation's appeals of Citation Forfeitures 157, 159, 161, 162, 163, 164, and 165, issued pursuant to the Commission's slamming citation program. Citation Forfeitures 161, 162, 163, 164, and 165 are affirmed, and Citation Forfeitures 157 and 159 are denied.

BACKGROUND

Pursuant to Resolutions UEB-001 and UEB-002, issued on August 24, 2006 and September 18, 2008, respectively, the Consumer Protection and Safety Division (CPSD) is authorized to issue citations for violations of third party verification requirements. CPSD issued these citation forfeitures on November 12, 2009, alleging Clear World Communications Corporation (Clear World) violated Pub. Util. Code § 2889.5 and 47 CFR 64.1120(c)(3)(iii). Clear World appealed those citation forfeitures on December 21, 2009, and the CPSD notified the Administrative Law Judge (ALJ) Division of the appeals on January 20, 2010. Clear World waived its right to a hearing on February 10, 2010. The parties agreed to a briefing schedule and to a stipulated joint appendix. Clear World and CPSD stipulated to the Joint Appendix on February 20, 2010. CPSD submitted its opening brief and the Joint Appendix on February 26, 2010, Clear World submitted its responsive brief on March 8, 2010, and CPSD submitted its reply brief on March 15, 2010.

DISCUSSION

Pub. Util. Code § 2889.5 requires that no change in telephone service may be made unless the customer is fully informed of the new service, agrees to the change and is told of additional charges, and the customer's decision to change providers is verified by an independent third-party verification service. Federal requirements for third party verifications are found in 47 CFR 64.1120(c)(3)(iii).[1] The Commission's slamming citation program was adopted in Resolution UEB-001 in August 2006. Pursuant to Resolution UEB-001, third-party verification tapes must include the following information:

i. the identity of the subscriber;
ii. confirmation that the person on the call is authorized to make the carrier change;
iii. confirmation that the person on the call wants to make the carrier change;
iv. the names of the carriers affected by the change (not including the name of the displaced carrier); and
v. the types of service provided.

Resolution UEB-002 was adopted on September 18, 2008 to modify UEB-001 to incorporate additional federal third party verification requirements. Third party verification tapes need to include the four criteria set forth above plus:

i. date of the verification; and
ii. confirmation that the person on the call understands that a carrier change, not an upgrade to existing services, bill consolidation, or any other misleading description of the transaction, is being authorized.

Carriers are also required to ensure that:

- any description of interLATA or long distance service convey that it encompasses both international and state-to-state calls, as well as some intrastate calls where applicable; and
- if the subscriber has additional questions for the carrier's sales representative during the verification, the verifier shall indicate to the subscriber that, upon completion of the verification process, the subscriber will have authorized a carrier change.

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[1] The Federal Communications Commission updated those requirements in its *Fourth Report and Order*, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket No. 94129, released January 9, 2008. The additional third party verification requirements of 47 CFR 64.1120(c)(3)(iii) were effective July 30, 2008. (Resolution UEB-002, at 2-3.)

COMMENTS

Public Utilities Code Section 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment to the two parties, Clear World and CPSD. No comments were filed.

FINDINGS OF FACT

1. On November 12, 2009, CPSD issued citation forfeitures 157, 159, 161, 162, 163, 164, and 165 on Clear World, alleging that Clear World violated Pub. Util. Code § 2889.5 and 47 CFR 64.1120(c)(3)(iii). The fine is $1,000 per citation. On December 21, 2009, Clear World appealed the citation to CPSD stating its third party verification process complied with Pub. Util. Code § 2889.5 and that an inference that the customers did not understand that a carrier change was being made is contrary to the written and audio taped evidence.

2. CPSD transmitted the appeals and case files to the Commission's Chief ALJ on January 20, 2010. Clear World waived its right to a hearing on February 20, 2010. The parties stipulated to a joint appendix on February 20, 2010. CPSD submitted its opening brief and the Joint Appendix on February 26, 2010. Clear World submitted its responsive brief on March 8, 2010, and CPSD submitted its reply brief on March 15, 2010.

3. Pursuant to Resolution UEB-001, third party verification tapes must include the following information: the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; the names of the carriers affected by the change (not including the name of the displaced carrier); and the types of service provided.

4. Pursuant to Resolution UEB-002 third party verification tapes also must include: the date of the verification; and confirmation that the person on the call understands that a carrier change, not an upgrade to existing services, bill consolidation, or any other misleading description of the transaction, is being authorized. UEB-002 states, "[t]he Director of CPSD, or a designated CPSD staff under the supervision of the Director, shall now serve citations to telecommunications providers subject to the requirements of Resolution UEB-001, as modified by UEB-002." Resolution UEB-002 was effective September 18, 2008.

5. The additional third party verification requirements of 47 CFR 64.1120(c)(3)(iii) were effective July 30, 2008.

6. CPSD presented evidence to support the citation forfeitures. A complaint had been submitted to the Commission's Consumer Affairs Branch for each citation forfeiture. The third party verifications were conducted in Spanish using the same script for the statements and questions. CPSD and Clear World agreed to use Clear World's translations of the scripts. (Joint Appendix, Tab 3) CPSD states the portions of the scripts that demonstrate violations of UEB-001 and UEB-002 (the first and fifth prompts for a response from the customers) are:

   > "This is Voice Log Teleservices and during this recorded call we will confirm your decision to select Clearworld Communications as your long distance provider. For any questions, you may press zero to speak to an operator. Please confirm that your billing number is [XXX-XXX-XXXX]. If that is correct, please say "yes" or "no," then press one."
   >
   > "Clearworld is a long distance provider that bills through your local telephone company, but Clearworld is not associated with your local telephone company in any other way. Please confirm that you are at least 18 years old and state clearly your date of birth. Please state your date of birth with the month, day and year, then press one."

   The violations alleged for these portions of the third party verification transcripts are: (1) the question is unclear that the person understands that a carrier change is being authorized. After the first sentence, customer should have been asked if he/she understood that a carrier change was being authorized as required by Pub. Util. Code § 2889.5, Resolutions UEB-001 and UEB-002, and 47 CFR 64.1120(c)(3)(iii); (2) the question is compound as it discusses two topics (*i.e.*, selecting Clear World and confirming a billing telephone number); and (3) the question is ambiguous as it is unclear if the yes refers only to the accuracy of the phone number or also to the selection of Clear World.

7. CPSD alleges the following question (the sixth prompt for a response from the customer) is (1) compound and ambiguous as it is unclear if the response refers to either subscriber, spouse or the authorized person; and (2) there is no confirmation that the person understands that a carrier change is being authorized:

   > "For telephone number [XXX-XXX-XXXX], are you the subscriber or spouse and the authorized person to switch the telephone service from one long distance provider to another one? Please say "yes" or "no," then press one."

8. CPSD alleges that the following questions (the seventh and eighth prompts for a response from the customer) refer to a specific service rather than seeking confirmation to change the carrier:

   > "For telephone number [XXX-XXX-XXXX], do you wish to switch your current long distance provider to Clearworld Communications? Please say "yes" if you wish to switch or "no" if you do not wish to switch."
   >
   > For telephone number [XXX-XXX-XXXX], do you also wish to switch your current local toll service to Clearworld Communications? Please say "yes" if you wish to switch or "no" if you do not wish to switch."

9. Clear World states the third party verifications for two of the citation forfeitures, 157 and 159, occurred on March 12, 2008 and August 25, 2008, respectively, prior to the Commission's adoption of Resolution UEB-002 on September 18, 2008. Clear World states there was a disclosure and then a question and that the customers were asked to answer three times about authorizing a change in carrier.

CONCLUSIONS OF LAW

1. Clear World violated Pub. Util. Code § 2889.5 and 47 CFR 64.1120(c)(3)(iii) for citation forfeitures 161, 162, 163, 164, 165 for a failure to comply with Resolution UEB-002's requirement that the third party verification confirm that the person on the call understands that a carrier change, not an upgrade to existing services, bill consolidation, or any other misleading description of the transaction, is being authorized.

2. Clear World complied with Resolution UEB-001's third party verification requirements for citation forfeitures 157 and 159 and did not violate Pub. Util. Code § 2889.5 and 47 CFR 64.1120(c)(3)(iii).

3. Clear World should pay a fine of $5,000 in full within 30 days of this resolution or begin to make payments within 30 days based on an approved written payment plan with CPSD. All checks should be made payable to the California Public Utilities Commission and sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, California 94102. Upon payment, the fine should be deposited in the State Treasury to the credit of the General Fund.

4. If Clear World fails to pay the fine as provided herein, CPSD should take any and all action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.

THEREFORE, IT IS ORDERED that:

1. Citation Forfeitures 161, 162, 163, 164, and 165, issued to Clear World Communications Corporation, are affirmed.
2. Citation Forfeitures 157 and 159, issued to Clear World Communications Corporation, are denied.
3. Clear World Communications Corporation shall pay a fine of $5,000 in full within 30 days of this resolution or begin to make payments within 30 days based on an approved written payment plan with the Consumer Protection and Safety Division. All checks shall be made payable to the California Public Utilities Commission and sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, California 94102. Upon payment, the fine shall be deposited in the State Treasury to the credit of the General Fund.
4. If Clear World Communications Corporation fails to pay the fine as provided herein, the Consumer Protection and Safety Division shall take any and all action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.
5. The appeal process for these citations is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 6, 2010, the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners