

APPENDIX D  
SETTLEMENT AGREEMENT

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.

A.08-09-020  
(Filed September 26, 2008)

**SETTLEMENT AGREEMENT**

SINDY J. YUN  
Staff Counsel

Consumer Protection and Safety Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-1999  
Fax: (415) 703-4432  
E-mail: [sjy@cpuc.ca.gov](mailto:sjy@cpuc.ca.gov)

THOMAS J. MACBRIDE, JR.  
Counsel

Cheap2Dial Telephone, LLC  
Goodin, MacBride, Squeri, Day &  
Lamprey, LLP  
505 Sansome Street, Suite 900  
San Francisco, CA 94111  
Phone: (415) 392-7900  
Fax: (415) 398-4321  
E-mail: [TMacbride@goodinmacbride.com](mailto:TMacbride@goodinmacbride.com)

June 2, 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.

A.08-09-020  
(Filed September 26, 2008)

**SETTLEMENT AGREEMENT**

The Consumer Protection and Safety Division of the California Public Utilities Commission (“CPSD”) and Cheap2Dial Telephone, LLC. (“Cheap2Dial”) (collectively, the “Parties”) hereby agree upon the following terms for the settlement (the “Settlement”) of CPSD’s Protest of Cheap2Dial’s Application, A.08-09-020 (the “Application”), for a certificate of public convenience and necessity (“CPCN”) to provide switchless interexchange service statewide. This Settlement shall become effective when approved by the California Public Utilities Commission (“Commission”). The date of issuance of the Commission order approving this Settlement shall be deemed, and is referred to below, as the “Effective Date.”

**I. STATEMENT OF STIPULATED FACTS**

- a. Cheap2Dial is a Delaware corporation offering service in all 50 states except Alaska and Hawaii. Cheap2Dial’s principal place of business and telephone number are as follows: 4075 Linglestown Road, # 241, Harrisburg, PA 17112; 866-600-9455.
- b. Cheap2Dial is a company registered with the California Secretary of State as of July 11, 2008.

- c. Cheap2Dial is a “telephone corporation” as defined in California Public Utilities (P. U.) Code Section 234,<sup>1</sup> which operates as a “switchless reseller” of long distance service in California.
- d. On September 20, 2008, Cheap2Dial filed an Application (A.08-09-020) with the Commission for registration as an interexchange carrier. In its application, Cheap2Dial requested authority to do business as a switchless reseller of long distance service in California.
- e. Cheap2Dial operates a website over which customers may order access to “dial around” (10XXX) long distance service. That service has been available to customers in California from July 1, 2007 to the present.
- f. On October 27, 2008, CPSD filed a timely Protest to A.08-09-020, alleging that Cheap2Dial had been unlawfully providing telecommunications services in California without appropriate authority from the Commission.
- g. Applicant initially took the position that it did not owe California fees or surcharges, while acknowledging that it had paid corresponding charges to the Federal Communications Commission. As part of this settlement, Applicant agrees that it owes the Commission \$3108.45 in surcharges, fees and interest for period of July 1, 2007 through December 31, 2008.
- h. On May 9, 2009, Applicant paid \$2825.86 in surcharges and fees for the period of July 1, 2007 through December 31, 2008.
- i. After discussions and negotiations concerning the specific facts and circumstances at issue between the Parties, and mindful of the fact that litigating the matters at issue could be costly, time-consuming and uncertain, the Parties have determined that they wish to resolve any disputes relating to A.08-09-020 voluntarily through a settlement, without the need for litigation.

## **II. FURTHER STIPULATIONS OF THE PARTIES**

- j. The Commission has previously found in Decision 05-02-001 that operating as a telephone corporation without proper Commission authority violates P.U.

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<sup>1</sup> All statutory references herein are to the California Public Utilities Code, unless otherwise indicated.

Code section 1013(a) and subjects the offending party to penalties pursuant to sections 2107 and/or 2108.

- k. The Commission has previously found in Decision 05-02-001 that the failure to pay surcharges and fees required by a Commission decision, and by violating a Commission order by continuing to operate without valid operating authority violates P.U. Code sections 405 and 702 and subjects the offending party to penalties pursuant to sections 2107 and/or 2108.
- l. The Commission's Consumer Affairs Branch received five (5) telephone and Web complaints concerning Cheap2Dial, alleging cramming, between July 2007 and October 2008. Cheap2Dial has resolved each of these complaints.
- m. Cheap2Dial has cooperated with CPSD in resolving the issues raised by CPSD in its Protest of A.08-09-020.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, each on its own behalf and on behalf of its respective successors and assigns, hereby agree as follows:

**1. Terms and Conditions**

1.1 Cheap2Dial acknowledges that (1) its website was available to customers in California to purchase telecommunications services for the period of July 1, 2007 through the date it filed A. 08-09-020 in September 2008 and (2) that the website has continued to operate to the present. During this time, Cheap2Dial held no Commission authority.

1.2 Cheap2Dial acknowledges that during the entire period it has operated in California, it has not remitted any fees or surcharges owed to the Commission except as set forth in Paragraph h supra.

1.3 Cheap2Dial agrees to remit the interest amount of \$282.57 pursuant to the payment schedule described in Paragraph 1.8 below.

1.4 Cheap2Dial agrees to pay all subsequent fees and surcharges as they become due and payable.

1.5 Cheap2Dial agrees to pay a fine of \$10,000 to the California State General Fund, pursuant to the payment schedule described in Paragraph 1.9 below.

1.6 Cheap2Dial shall timely file any and all reports required by the Commission for all years going forward, including year 2009, so long as Cheap2Dial continues to provide services in California.

1.7 CPSD agrees that A.08-09-020 should be granted.

### **Payment Schedule**

1.8 Within 15 days of the Effective Date, Cheap2Dial shall remit to the Commission \$282.57 interest due to the Commission for the period of July 1, 2007 through December 31, 2008. Cheap2Dial shall be deemed in default if full payment pursuant to this Paragraph is not received by the Commission within 5 days of the due date. In the event of default by Cheap2Dial of this payment, commencing on the default date interest shall accrue on any remaining unpaid balance of the amount stated in this Paragraph at a rate of 10% per year calculated and compounded monthly.

1.9 Within 15 days of the Effective Date, Cheap2Dial shall make a payment of five thousand dollars (\$5,000) to the California State General Fund. The remaining \$5,000 shall be paid to the Commission within 6 months from the Effective Date. No interest shall accrue on this fine amount so long as Cheap2Dial does not default on any payment made pursuant to this Paragraph. Cheap2Dial shall be deemed in default if full payment pursuant to this Paragraph is not received within 5 days of the due date. Should Cheap2Dial default on any of these fine payments, CPSD may seek Commission revocation of the Certificate of Public Convenience and Necessity of Cheap2Dial.

Penalty/Fine payments shall be paid by a separate check or money order as set forth in Paragraph 1.9 and made payable to the California State General Fund. The memo section of each check shall contain the Decision number and state "State General Fund Remittance." Penalty/Fine payments shall be sent to the following address:

California Public Utilities Commission  
Attn: Fiscal Office Room 3000  
505 Van Ness Avenue  
San Francisco, CA 94102

## **2. Enforcement**

2.1 Each material breach of this Settlement will constitute a separate violation and will entitle the Commission to take any necessary action to enforce its orders.

2.2 The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement. No Party may bring an action pertaining to this Settlement in any local, State, Federal court or administrative agency, without first having exhausted its administrative remedies at the

Commission. This Settlement shall be governed by and interpreted in accordance with the laws of the State of California and Commission rules and regulations.

2.3 Commission adoption of this Settlement is binding on all Parties to this action. Parties agree that pursuant to Rule 12.5 of the Commission's Rules of Practice and Procedure, this Settlement shall not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

2.4 After the Issuance Date of the Decision adopting this Settlement Agreement, CPSD will initiate no enforcement action and seek no administrative or other penalties against Cheap2Dial based on the evidence of the alleged violations recited above in this case. This provision will not apply if Cheap2Dial breaches this Settlement or violates the Commission order approving it.

### **Other Proceedings**

2.5 The Parties agree that nothing contained in this Agreement constitutes a binding admission or concession in any other proceeding. The Parties have entered into this Agreement to effectuate a compromise and settlement of the contested matters pending before the Commission.

### **3. Execution of Settlement**

3.1 This Settlement is subject to approval and adoption by the Commission. The Parties agree to execute or furnish any other additional information, documents, and/or testimony, or take any other action, that the Commission or CPSD may request, as necessary to implement the Joint Motion for Approval of the Settlement Agreement and Settlement Agreement.

3.2 This Settlement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts will be deemed an original and will together constitute the same Settlement. This Settlement is the entire agreement among the Parties, which cannot be amended or modified without the express written consent of all the Parties.

3.3 This Settlement is not severable. If, pursuant to Rule 12.4 of the Commission's Rules of Practice and Procedure, the Commission materially modifies or negates any provision of this Settlement, the Parties must consent to such change. A Party will be deemed to have consented to the Commission modification unless, within 15 calendar days following the date of issuance of the Commission proposed modification(s) (or such longer period as may be directed by the Commission), that Party notifies in writing the other Party and files with the Commission its objection to the modification(s). After the 10th day following the filing of the objection if the objecting

Party has not withdrawn, canceled, or modified its objection, the Settlement will be deemed rescinded. If this Settlement is rescinded following payment of any sums by Respondents, those sums shall be refunded within 15 calendar days of rescission.

3.4 Each Party represents that it has investigated the facts and law pertaining to the matters described in this Settlement. No Party has relied or presently relies upon any oral or written statement, promise, or representation by any other Party, except as specifically set forth in this Settlement.

3.5 This Settlement will be binding upon the respective Parties, their successors, assignees, executors and administrators.

3.6 The Parties acknowledge and stipulate that this Settlement is fair and not the result of any fraud, duress, or undue influence by any other Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement. Moreover, each Party has had its respective attorney or other authorized person review the terms of this Settlement. By executing this Settlement each Party declares that the provisions herein are adequate, reasonable, and mutually agreed upon; and that they are entering this Settlement freely and voluntarily.

**IN WITNESS WHEREOF**, the Parties hereby execute the Settlement Agreement on the date first set forth opposite their signatures.

**CHEAP2DIAL TELEPHONE, LLC.**

/s/ BARRY RYNEARSON

Dated: June 2, 2009

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BARRY RYNEARSON  
Managing Member  
Cheap2Dial Telephone, LLC  
4075 Linglestown Road  
Harrisburg, PA 17112

/s/ THOMAS J. MACBRIDE, JR.

Dated: June 2, 2009

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THOMAS J. MACBRIDE, JR.  
Counsel to Cheap2Dial Telephone, LLC  
Goodin, MacBride, Squeri, Day &  
Lamprey, LLP  
505 Sansome Street, Suite 900  
San Francisco, CA 94111

**CONSUMER PROTECTION AND  
SAFETY SERVICES DIVISION**

Dated: June 2, 2009

/s/ RICHARD W. CLARK

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RICHARD W. CLARK  
Director of Consumers Protection and  
Safety Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Dated: June 2, 2009

/s/ SINDY J. YUN

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SINDY J. YUN  
Staff Counsel  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

(END OF APPENDIX D)