

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**
10-16-14
11:24 AM

October 16, 2014

Agenda ID #13387
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 14-06-022

This is the proposed decision of Administrative Law Judge Lirag. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 20, 2014 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MARYAM EBKE for
Timothy J. Sullivan,
Chief Administrative Law Judge (Acting)

TJS:avs

Attachment

Decision PROPOSED DECISION OF ALJ LIRAG (Mailed 10/16/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of ACA Prepaid, Inc. for authorization to obtain a Certificate of Public Convenience and Necessity as a Telephone Corporation Pursuant to the provisions of Public Utilities Code Section 1001.

Application 14-06-022
(Filed June 20, 2014)

**DECISION DISMISSING THE APPLICATION WITHOUT PREJUDICE
AND GRANTING THE MOTION FOR LEAVE TO FILE CONFIDENTIAL
MATERIAL UNDER SEAL****Summary**

On June 20, 2014, ACA Prepaid, Inc. (ACA) filed Application (A.) 14-06-022 for authorization to obtain a Certificate of Public Convenience and Necessity as a Telephone Corporation pursuant to the provisions of Section 1001 of the Public Utilities Code. ACA also filed a Motion for Leave to File Confidential Material under Seal, requesting the Commission to treat ACA's financial records as confidential material.¹

After review of the application, a ruling requesting additional information was issued on July 18, 2014. ACA was required to submit its Articles of Incorporation and disclose what deposits are required to be provided to other telecommunications carriers in order to provide the services set forth in the application. ACA was directed to submit the required information within

¹ See Motion for Leave to File Confidential Material under Seal filed on July 20, 2014: Confidential Material Attached and Filed under Seal as Exhibit 2 (Financial Information).

30 days from the date of the ruling. To date, ACA has not responded to the ruling requesting information and has not submitted the information specified in the ruling requesting information.

On August 4, 2014, the Commission's Safety and Enforcement Division (SED) filed a protest to the application. The protest cited ACA's unauthorized operation in California, which ACA admitted to in the application,² and the non-disclosure of a key official in the application in violation of Rule 1.1 of the Rules of Practice and Procedure. The protest was filed within the 30-day period from the date notice of the filing of the application first appeared in the Commission's Daily Calendar³ on July 3, 2014. ACA did not file a reply to SED's protest.

SED recommended that the Commission consider imposing penalties and to investigate whether ACA is engaged in practices harmful to consumers.

A prehearing conference (PHC) was scheduled on September 9, 2014, at 10:00 a.m. in the Commission Court Room in San Francisco. The purpose of the PHC was to determine the parties, positions of the parties, to discuss the scope and schedule of the proceeding, and other procedural matters. Notice of the scheduled PHC was filed on August 26, 2014.

At the PHC held on September 9, 2014, neither ACA Prepaid, Inc. nor its counsel, Mr. Edward Maldonado, was present. ACA Prepaid, Inc.'s absence was

² See A. 14-06-022, at 2.

³ See Rule 2.6(a) of the Rules of Practice and Procedure.

noted for the record during the proceeding.⁴ It was also noted for the record that counsel for the SED, Ms. Lindsay Brown, was present during the PHC.⁵

This decision grants ACA's motion to file its financial records under Exhibit 2 of the application, under seal, for a period of three years from the date of this order. ACA's financial records contain proprietary information concerning ACA, and disclosure thereof may provide ACA's competitors an unfair advantage against ACA, to its detriment.

Given ACA's failure to respond to the July 18, 2014 ruling requesting additional information, and its failure to appear at the September 9, 2014 PHC, this application should be dismissed for lack of prosecution without prejudice to refile at a later date. Should ACA file a new application, it should reference this application and address the unauthorized operation and lack of disclosure raised in SED's protest.

1. Categorization and Need for Hearing

In Resolution ALJ 176-3339 dated July 10, 2014, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. A protest was filed by the Safety and Enforcement Division (SED) on August 4, 2014, and a prehearing conference (PHC) was held on September 9, 2014. ACA Prepaid, Inc. (ACA) was not present during the PHC conference. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

⁴ See Reporter's Transcript, at 3.

⁵ See Reporter's Transcript, at 3

2. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and procedure. Comments were filed by _____ and reply comments were filed by _____ on _____.

3. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Rafael L. Lirag is the assigned ALJ in this proceeding.

Findings of Fact

1. ACA filed a Motion for Leave to File Confidential Material under Seal filed with its initial application, seeking confidential treatment of Exhibit 2, pursuant to Rule 11.4 of the Rules of Practice and Procedure.
2. On July 18, 2014, the assigned ALJ issued a Ruling requesting ACA to provide additional information to the application within thirty days from the date of the Ruling.
3. To date, ACA has failed to file the information specified in the Ruling requesting information.
4. A protest to the application was filed by SED on August 4, 2014 recommending penalties for ACA.
5. ACA admitted to unauthorized operation in California.
6. Notice of a PHC scheduled for September 9, 2014, at 10:00 a.m. was filed on August 26, 2014.
7. ACA was not present at the PHC on September 9, 2014.

Conclusions of Law

1. ACA has failed to provide the information required by the Commission in this proceeding.
2. The record should be closed and the Application dismissed without prejudice.
3. ACA's Motion to file Exhibit 2 of its application materials under seal has stated good cause and should be granted for a period of three years.

O R D E R

IT IS ORDERED that:

1. ACA Prepaid, Inc.'s Motion for Leave to File Confidential Material Filed under Seal is granted. Exhibit 2 of Application 14-06-022 shall remain under seal for three years and shall not be made accessible or disclosed to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, the Chief ALJ, or the ALJ then designated as Law and Motion Judge.
2. If ACA Prepaid, Inc. (ACA) believes it is necessary to keep the data in Exhibit 2 under seal for an additional period, ACA shall file a new motion to file confidential information under seal at least 30 days before the expiration of this grant of confidentiality.
3. Application 14-06-022 is dismissed without prejudice.

4. If ACA Prepaid, Inc. files a subsequent application it must reference this application and the protest of the Commission's Safety and Enforcement Division.

5. Application 14-06-022 is closed.

This order is effective today.

Dated _____, at San Francisco, California.