

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**

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January 20, 2023

Agenda ID # 21311
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 22-04-022:

This is the proposed decision of Administrative Law Judge Rajan Mutialu. 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 February 23, 2023, 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 to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:mef

Attachment

Decision PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE
RAJAN MUTIALU Mailed (1/20/2023)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Sonictel, Inc. for
Registration as an Interexchange
Carrier Telephone Corporation
Pursuant to the Provisions of
Public Utilities Code Section 1013.

Application 22-04-022

DECISION GRANTING MOTION TO WITHDRAW**Summary**

The decision grants Sonictel, Incorporated's motion to withdraw this application. This proceeding is closed.

1. Background

Sonictel, Incorporated (Sonictel) currently does not provide telecommunication services in California. Sonictel's principal place of business is located in 1511 Rt. 22, Suite 109, Brewster, NY 10509.

On April 29, 2022, Sonictel, a New York corporation, filed Application (A.) 22-04-022 requesting registration as an interexchange carrier pursuant to Public Utilities (Pub. Util.) Code Section 1013. On May 5, 2022, Sonictel's application appeared on the Commission's Daily Calendar. On May 31, 2022, Sonic Telecom, LLC (U-7002-C) (Sonic), timely filed a protest.

On August 9, 2022, Sonictel filed a motion to withdraw (Motion) its application. Pursuant to Rule 11.1(e) of the Commission's Rules of Practice and

Procedure, Sonic timely filed an opposition to Sonictel's Motion on August 23, 2022.

On October 12, 2022, the proceeding was reassigned from Administrative Law Judge (ALJ) Shannon O'Rourke to ALJ Mutialu.

2. Jurisdiction

Pub. Util. Code Section 216(a) defines the term "public utility" to include a "telephone corporation," which in turn is defined in Pub. Util.

Code Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Sonictel's application proposed to provide interexchange services. Sonictel proposed service is a public utility subject to our jurisdiction.

3. Discussion

Sonictel's motion alleged that withdrawal of its application was attributed to market changes and best served the public interest. Further, Sonictel reserved its right to file an application at a later date and pledged not to advertise or operate in California until authorized by the Commission.

Sonic protested Sonictel's application based on their use of a company name that could infringe on Sonic's trademark. Based on the similarity in names, Sonic claimed that Sonictel would confuse customers and harm Sonic's ability to compete. Sonic pointed out that Sonictel did not disclose its entire team of managers and directors, thereby preventing the Commission from thoroughly vetting Sonictel's suitability to operate as an interexchange carrier in California. Sonic also asserted that Sonictel committed a Rule 1.1 violation by making a false statement of fact when it did not disclose that Sonic's protest led to the application withdrawal.

Only the Commission has the authority to close or dismiss a contested proceeding. Although the Commission usually grants motions to withdraw, the Commission may deny motions to withdraw when doing so is in the public interest and may pursue matters of public concern after an applicant has moved to withdraw an application. The Commission may also deny a motion for withdrawal when the applicant requests withdrawal for the purpose of avoiding an adverse outcome.

Based on a review of this matter, the Commission does not foresee any harm to the public interest caused by closing this proceeding and allowing Sonictel to withdraw its application. Sonictel does not operate in California. Therefore, Sonic's claim that the Sonictel company name would confuse customers and not serve the public interest is a moot point.

We do not agree with Sonic that Sonictel violated Rule 1.1. Rule 1.1 requires Sonictel not to mislead the Commission either intentionally or inadvertently. Sonictel failed to include all management officials, which made the application incomplete. However, this does not rise to the level of a Rule 1.1 violation and would have been addressed through the course of the application review process.

Sonictel is also accused of trademark violation. However, we make no finding regarding Sonic's allegations of trademark infringement. Trademark infringement disputes are not within the Commission's jurisdiction. Accordingly, we find that Sonictel did not violate Rule 1.1.

Since Sonictel's motion to dismiss is in the public interest and the Commission lacks jurisdiction to adjudicate trademark infringement disputes, we grant Sonictel's motion to withdraw its application. The Commission may impose conditions on future applications even after an application is withdrawn

and a proceeding is closed.¹ The Commission has often granted applicants' motions to withdraw with the condition that future applications brought by the same applicant or brought by any of the applicant's current directors, officers, or owners of more than 10 percent of its outstanding shares, are required to reference their prior applications and any decision granting the motion to withdraw their prior applications;² we do so here. If Sonictel refiles an application under the same or similar name, Sonictel must also serve it to the service list for this proceeding.

4. Comments on Proposed Decision

The proposed decision of ALJ Mutialu 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. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Rajan Mutialu is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On April 29, 2022, Sonictel Incorporated filed Application 22-04-022 requesting registration as an interexchange carrier under Public Utilities Code Section 1013.
2. On August 9, 2022 Sonictel Incorporated filed a motion to withdraw its application based on market changes.
3. Sonictel Incorporated is not currently advertising or operating in California.

¹ Decision (D.) 04-06-016, D.01-02-040.

² D.18-08-003.

4. Withdrawal of Sonictel Incorporated's application does not adversely affect the public interest.

Conclusions of Law

1. Sonictel Incorporated did not violate Rule 1.1 in its motion to withdraw its application of the Commission's Rules of Practice and Procedure by making a false statement of fact that misled the Commission.

2. Trademark infringement disputes are not within the jurisdiction of the Commission.

3. Sonictel Incorporated's motion to withdraw its application should be approved.

4. Application 22-04-022 should be dismissed without prejudice.

5. Sonictel Incorporated (Sonictel) should disclose Application 22-04-022 and this Decision in any subsequent application requesting a Certificate of Public Convenience and Necessity for authority to provide telecommunications services filed by Sonictel or brought by any of Sonictel's current directors, officers, or owners of more than 10 percent of its outstanding shares.

6. Sonictel Incorporated should serve any future application using the same or a similar name on the service list in this proceeding concurrently with the filing of its application.

7. Application 22-04-022 should be closed.

O R D E R

IT IS ORDERED that:

1. Sonictel Incorporated's motion to withdraw this application is granted.
2. Application 22-04-022 is dismissed without prejudice.
3. Sonictel Incorporated (Sonictel) must disclose Application 22-04-022 and this Decision in any subsequent application requesting a Certificate of

Public Convenience and Necessity for authority to provide telecommunications services filed by Sonictel or brought by any of Sonictel's current directors, officers, or owners of more than 10 percent of its outstanding shares.

4. In the event that Sonictel Incorporated seeks a Certificate of Public Convenience and Necessity in the future using the same or a similar name, it must serve that future application on the service list in this proceeding concurrently with the filing of its application.

5. Application 22-04-022 is closed.

This order is effective today.

Dated _____, at San Francisco, California.