

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

**FILED**

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May 14, 2024

**Agenda ID #22601**  
**Ratesetting**

TO PARTIES OF RECORD IN APPLICATION 22-11-011:

This is the proposed decision of Administrative Law Judge Seaneen Wilson. 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 June 20, 2024 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.

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

Chief Administrative Law Judge

MLC:avs

Attachment

Decision PROPOSED DECISION OF ALJ WILSON (Mailed 5/14/2024)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

Application 22-11-011

**DECISION GRANTING KLOUD COMMUNICATIONS, INC. A CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE  
RESOLD INTEREXCHANGE SERVICES AND AUTHORITY TO ACQUIRE  
VERTEX TELECOM, INC.**

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**DECISION GRANTING KLOUD COMMUNICATIONS, INC. A CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE  
RESOLD INTEREXCHANGE SERVICES AND AUTHORITY TO ACQUIRE  
VERTEX TELECOM, INC.**

**Summary**

Pursuant to Public Utilities (Pub. Util.) Code Section 1001, the California Public Utilities Commission (Commission) grants Kloud Communications, Inc. (Kloud) a certificate of public convenience and necessity to provide resold interconnected voice over internet protocol (VoIP) services in California subject to the terms and conditions set forth in the Ordering Paragraphs. Pursuant to Pub. Util. Code Section 854(a), the Commission grants authority for Kloud's acquisition of Vertex Telecom, Inc. (Vertex) on a prospective basis. Kloud must pay \$9,000 for its prior unauthorized transfer of control of Vertex to Kloud. Kloud must also pay \$24,000 for failure to disclose a prior settlement agreement between CPED and Vertex in 2016 in the instant application, thereby violating Rule 1.1 of the Commission's Rules of Practice and Procedure.

Kloud must pay all of Vertex's public purpose program surcharges owed for prior provision of interconnected VoIP services in California, since control of Vertex was transferred to Kloud on September 17, 2021 and any late fees accrued prior to its application for a registration. Kloud's licensing obligations may be modified by the Commission in its pending Rulemaking 22-08-008. Vertex's operating authority (issued under U6786C) is revoked.

Application 22-11-011 is closed.

**1. Background**

On November 8, 2022, Kloud Communications, Inc. (Kloud) filed Application (A.) 22-11-011 for registration as an Interexchange Carrier Telephone Corporation pursuant to Public Utilities (Pub. Util.) Code Section 1013. After

reviewing A.22-11-011, it was converted to a request for a certificate of public convenience and necessity (CPCN) pursuant to Pub. Util. Code Section 1001 because a protest was filed by the Consumer Protection and Enforcement Division (CPED) on December 14, 2022.<sup>1</sup>

A prehearing conference (PHC) was held on April 5, 2023. On April 24, 2023, the assigned Administrative Law Judge (ALJ) issued a ruling requesting information, to which Kloud responded on May 4 and 12, 2023. On April 26, 2023, the assigned Commissioner issued the Initial Scoping Memo.

On June 2, 2023, the assigned ALJ issued a ruling granting CPED's request for an extension of time to serve intervenor testimony. On June 20, 2023, a Status Conference was held to clarify selected issues of concern. Also on June 20, 2023, the assigned ALJ issued a ruling granting CPED's request to stay the schedule set out in the Initial Scoping Memo.

On July 18, 2023, Kloud and CPED filed and served their *Joint Motion of CPED and Kloud for Approval of Settlement Agreement* (Joint Motion), to which the *Settlement Agreement between Kloud and CPED* (Settlement Agreement) was attached as Exhibit A.

On July 21, 2023, the assigned ALJ issued a ruling requesting information, to which Kloud responded on July 28, 2023.

On August 2, 2023, an Amended Assigned Commissioner's Scoping Memo was issued, adding the following issue: "Whether Kloud meets all of the Commission requirements for the acquisition of Vertex, including, but not

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<sup>1</sup> On February 22, 2023, a Notice of Reassignment was filed by then Acting Chief ALJ Cooke.

limited to, financial, technical, and California Environmental Quality Act requirements for acquisition of a utility regulated by the Commission.”

On October 12, 2023, a Status Conference was held to discuss Kloud’s acquisition of Vertex Telecom Inc. (Vertex) without California Public Utilities Commission (Commission) authority. At this Status Conference, the assigned ALJ ruled that, if Kloud agreed that it had violated Rule 1.1 of the Commission’s Rules of Practice and Procedure (Rule), it could file and serve a motion stipulating to such and proposing a fine amount, by November 10, 2023. On November 9, 2023, Kloud requested an extension to file and serve a motion until November 13, 2023, which the assigned ALJ granted on November 9, 2023. On November 13, 2023, Kloud filed and served a *Motion to Stipulate of Kloud* (Motion to Stipulate) as well as a *Motion of Kloud for Leave to File Under Seal Confidential Information Included in Motion to Stipulate* (Attachments 1 and 2) (Law and Motion).

On January 12, 2024, February 6, 2024, March 11, 2024, and March 21, 2024, the assigned ALJ issued rulings requesting information, to which Kloud replied on January 17, 2024, February 16, 2024, March 21, 2024, and April 2, 2024, respectively. On March 21, 2024 and April 2, 2024, Kloud also filed Motions for confidential treatment of the responses they filed on those dates.

Kloud’s place of business is located at 919 North Market Street, Suite 950, Wilmington, Delaware 19801.

All assigned Commissioner and ALJ rulings are affirmed herein.

## **2. Submission Date**

This matter was submitted on April 2, 2024, the date Kloud filed and served its response to the March 21, 2024 ruling requesting information.

### **3. Jurisdiction**

#### **3.1. CPCN**

The Commission has broad jurisdiction over “public utilities,”<sup>2</sup> as defined in Public Utilities (Pub. Util.) Code Section 216.<sup>3</sup> California’s constitution extends the Commission’s jurisdiction to companies engaged in “the transmission of telephone and telegraph messages,” which includes both public utility services and facilities.<sup>4</sup> The Commission classifies entities providing two-way voice communications service for compensation within California as “telephone corporations”<sup>5</sup> and regulates them as public utilities.<sup>6,7</sup>

As part of its regulatory authority over “telephone corporations,” the Commission authorizes certificates of public convenience and necessity to “telephone corporations” seeking to construct a “line, plant, or system, or any extension thereof” in California.<sup>8</sup> Pub. Util. Code Section 233 defines a “telephone line” to include “all conduits, ducts, poles, wires, cables, instruments, and appliances, and other real estate, fixtures, and personal property owned or controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.” This includes services delivered over any

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<sup>2</sup> Pub. Util. Code § 216.

<sup>3</sup> Pub. Util. Code § 234.

<sup>4</sup> See D.20-07-011, at 14-15, See Cal. Const., Art. XII, §§ 1-6; Pub. Util. Code § 701.

<sup>5</sup> Pub. Util. Code §§ 216, 233, 234; D.22-10-021 at 68.

<sup>6</sup> Pub. Util. Code § 216(a).

<sup>7</sup> Telephone corporations are required to file annual affiliate transaction reports, and pay surcharges and user fees.

<sup>8</sup> Pub. Util. Code § 1001.



technology, including but not limited to, traditional copper lines, coaxial cable, fiber optic cable, and mobile or fixed wireless radios.

Providers of interconnected VoIP service are telephone corporations subject to the Commission's jurisdiction.<sup>9</sup> In 2021, the Commission's Communication's Division directed interconnected VoIP carriers operating in California to apply for either a registration pursuant to Pub. Util. Code Section 1013 or a Certificate of Public Convenience and Necessity pursuant to Pub. Util. Code Section 1001. The Commission is currently considering the licensing obligations for interconnected VoIP carriers in Rulemaking (R.) 22-08-008.

Kloud requests authority to offer resold interconnected VoIP services to commercial customers. Kloud is a telephone corporation and a public utility subject to the Commission's jurisdiction.

By Decision (D.) 16-06-009 the Commission found that Vertex is a telephone corporation and public utility subject to the Commission's jurisdiction.

### **3.2. Transfer of Control**

California Pub. Util. Code Section 854 et seq. provides broad Commission authority to approve transfers of control which involve public utilities operating within California, as is requested in this proceeding. Pub. Util. Code Section 854(a), which is applicable here, states:

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<sup>9</sup> Pub. Util. Code §§ 216, 233, 234; D.22-10-021 at 68, *citing* R.22-08-008.

No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The Commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities that are subject to this section of the statute.

The Commission retains the same regulatory authority over the CPCN holder that it currently possesses.

In Exhibit H to A.22-11-011 and subsequently filed documents, Kloud states that it acquired Vertex Telecom, Inc. (Vertex) on September 17, 2021, without Commission authority.

#### **4. CPCN Criteria**

##### **4.1. California Environmental Quality Act (CEQA)**

Pursuant to the CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure (Rules), the Commission acts as the designated lead agency to consider the environmental impacts of projects that are subject to the Commission's discretionary approval. Pursuant to Public Resources Code Section 21065, in part, a project under CEQA may or will cause a physical change in the environment. Since Kloud states that it does not intend to construct any facilities, this application does not involve and will not result in a physical change in the environment. Therefore, granting this application will not have an adverse impact upon the environment. Before it can construct facilities, including equipment to be installed in existing buildings or structures, Kloud must file for additional authority, and submit to any necessary CEQA review.

#### **4.2. Financial Qualifications**

To be granted a CPCN for authority to provide resold interexchange services, an applicant must demonstrate that it has a minimum of \$25,000 cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses.<sup>10</sup> In its confidential Exhibit G to A.22-11-011 and Attachment A to its May 12, 2023 response to the April 26, 2023 ALJ ruling, Kloud provided unaudited financial statements and a certificate of deposit, respectively. This financial documentation demonstrates that Kloud has at least \$25,000 that is reasonably liquid and available and has sufficient funds to meet its start-up expenses. By this same financial documentation, Kloud is able to meet any deposits required of carriers. Therefore, Kloud has fulfilled these requirements. Kloud's financial documentation is subject to verification and review by the Commission for one year to ensure that such funds are available. Accordingly, Kloud must demonstrate that it maintained the required funds by providing the Commission's Communications Division with a confidential copy of its updated financial documentation at both six and 12 months from the issuance date of this decision by email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov).

#### **4.3. Technical Qualifications**

To be granted a CPCN for authority to provide interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.<sup>11</sup> Kloud supplied biographical information on its management in Exhibit C to its application that demonstrates

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<sup>10</sup> The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.13-05-035 and D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.14-11-004.

<sup>11</sup> D.13-05-035; D.95-12-056 at Appendix C, Rule 4.A.

it has sufficient expertise and training to operate as a telecommunications provider.

In A.22-11-011, Kloud verified that no one associated with or employed by Kloud as an affiliate, officer, director, partner, or owner of more than 10 percent of Kloud, or anyone acting in a management capacity for Kloud:

(a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of [Sections] 17000 et seq., [Sections] 17200 et seq., or [Sections] 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.<sup>12</sup>

Also, to the best of Kloud's knowledge, neither Kloud, or any affiliate, officer, director, partner, nor owner of more than 10 percent of Kloud, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission or any law

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<sup>12</sup> These certifications are required by D.13-05-035, OP 14.

enforcement or regulatory agency for failure to comply with any law, rule or order.<sup>13</sup>

In its December 14, 2022 protest, CPED states that Kloud failed to disclose a “prior Vertex Settlement involving misrepresentations to consumers” that involved current Kloud officers. CPED also states that by failing to disclose this information, Kloud violated Rule 1.1 of the Commission’s Rules of Practice and Procedure (Rules). On January 31, 2023, Kloud amended A.22-11-011, in which it disclosed the aforementioned information.

Based on Kloud’s amendment to A.22-11-011, the Commission finds that Kloud is in compliance with the disclosure requirements of D.13-05-035. In Section 6 of this decision, we discuss the settlement reached between CPED and Kloud regarding Kloud’s violation of Rule 1.1.

#### **4.4. Tariffs**

Kloud requested detariffed status and may be exempt from the requirement to file tariffs provided that it complies with the consumer protection rules identified in D.98-08-031. Kloud indicated it will not offer basic service, such as residential local exchange voice, and therefore detariffed status is granted.

Pursuant to D.12-12-038, Appendix A, Section II, parts a and b, basic service must be tarified or scheduled. In the future, if Kloud decides to offer services that require a tariff or schedule, such as basic service, it must submit proposed tariffs and/or user guides to the Commission’s Communications Division by Tier 2 Advice Letter using the General Order 96-B advice letter process at least 30 days before initiation of service.

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<sup>13</sup> *Ibid.*

#### **4.5. Expected Customer Base**

Kloud provided its estimated customer base for the first and fifth years of operation in July 28, 2023 response to the July 21, 2023 ALJ ruling requesting information. Therefore, Kloud has complied with this requirement.

#### **4.6. Prior Provision of Service**

Kloud indicates that, since its acquisition of Vertex on September 17, 2021, it has been providing interconnected VoIP service in California and providing service to Vertex customers as well as new customers. Vertex's unauthorized transfer of control is addressed in Section 5, below. Kloud is on notice that Commission decisions in R.22-08-008 may impact the licensing status of Kloud, as well as any VoIP carriers operating in California that obtained a utility identification number under the informal VoIP registration process previously in effect under Pub. Util. Code Section 285, a registration pursuant to Util. Code Section 1013, or a Certificate of Public Convenience and Necessity pursuant to Pub. Util. Code Section 1001.

Between September 17, 2021, and the present, Kloud also earned intrastate revenue from previous Vertex as well as new customers subject to surcharge assessments. Pub. Util. Code Section 285 (Assembly Bill 841, Stats. 2011, Ch. 685), mandates that the Commission require interconnected VoIP service providers to collect and remit surcharges in support of state universal service funds in support of the following public purpose programs:

- California High-Cost Fund-A Administrative Committee Fund under Pub. Util. Code Section 275.
- California High-Cost Fund-B Administrative Committee Fund under Pub. Util. Code Section 276.
- Universal Lifeline Telephone Service Trust Administrative Committee Fund under Pub. Util. Code Section 277.

- Deaf and Disabled Telecommunications Program Administrative Committee Fund under Pub. Util. Code Section 278.
- California Teleconnect Fund Administrative Committee Fund under Pub. Util. Code Section 280.
- California Advanced Services Fund under Pub. Util. Code Section 281.

Effective April 1, 2023, all telephone corporations, including VoIP carriers or providers, operating in California are required to assess, collect, and remit California's public purpose program surcharges pursuant to the access line flat rate surcharge mechanism adopted in D.22-10-021. Surcharges apply only to public purpose program surcharges imposed on an end use customer's "place of primary use" that is located within California.

Carriers are assessed a 10 percent accrued interest for late remittance of public purpose program surcharges owed to the Commission.

Kloud must remit any past due public purpose program (PPP) surcharges owed for its prior operation of intrastate, interconnected VoIP service from September 17, 2021 to the issuance date of this decision by providing the Commission's Communications Division (CD) with a summary of: (1) its monthly intrastate revenues from September 17, 2021 to March 31, 2023, and (2) the monthly number of active access lines from April 1, 2023 to the effective date of the decision. This information should be sent with the subject line "Surcharge Prior to CPCN Approval Per [Insert Decision Number here, *e.g.*, **D.24-XX-XXX**], A.22-11-011" by sending one email to both [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov) and [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) within 30 days of the issuance date of this decision. In its determination of revenues earned and PPP surcharges owed, CD shall consider all amounts already reported and/or paid.

Kloud is subject to the obligation to pay late fees on past due surcharges. However, Kloud's obligation to remit 10 percent interest of past due surcharges is waived for the period following the filing date of A.22-11-011 in acknowledgement of Kloud's good faith effort to come into compliance with the Commission's requirements by requesting a registration pursuant to Pub. Util. Code Section 1013.

While providers of resold interexchange service are required to pay past due user fees, this decision waives past due user fees in recognition of the Commission's deliberation of licensing obligations for VoIP carriers in R.22-08-008 and R.21-03-002. Kloud is on notice that the user fee obligations may be subject to change by determinations made in R.22-08-008 and R.21-03-002.

CD staff is authorized to calculate the past due public purpose program surcharges and late fees owed by Kloud. Kloud will, within 30 days of its receipt of the total amount owed for public purpose program surcharges and interest from CD, submit one cashier's check or money order payable to the California Public Utilities Commission for payment of the total amount owed either by mail or in person delivery to: California Public Utilities Commission, Fiscal Office, Room 3000, 505 Van Ness Avenue, San Francisco, CA 94102. Kloud must include a written identification stating the decision number and the application number, such as the following: "Per Decision [enter decision number here] of A.22-11-011." Kloud will email CD of payment made at [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov). Failure to remit past due surcharges and interest owed within 90 days of the payment deadline will result in additional collections or enforcement action against Kloud.



#### **4.7. Environmental and Social Justice Action Plan**

On January 12, 2024, the ALJ issued a ruling requiring that Kloud explain how the authority sought is consistent with the Commission's ESJ Action plan to which Kloud responded on January 17, 2024. Kloud states that it will consider the ESJ plan goals in the provision of service and implementation of its business practices. Based on the information provided in the response, this decision finds that approval of the application is consistent with the Commission's ESJ goals.

#### **4.8. Safety Considerations**

With the adoption of the *Safety Policy Statement of the California Pub. Util. Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. The Commission considered the potential safety implications here and is satisfied that Kloud will meet the Commission's minimum safety goals and expectations of CLECs because: (1) Kloud has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) Kloud is a public utility that is required pursuant to Pub. Util. Code Section 451 to "... furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

#### **4.9. Conclusion**

Kloud's application conforms to our rules for authority to provide resold interexchange services pursuant to Pub. Util. Code Section 1001. Accordingly, the Commission grants Kloud's CPCN to provide resold interexchange services in California subject to compliance with the terms and conditions set forth in the OPs.

The CPCN granted by this decision provides benefits to Kloud and corresponding obligations. Kloud receives authority to operate in the prescribed service territory, and this authority enables Kloud, pursuant to Section 251 of the 1934 Communications Act, as amended by the 1996 Telecommunications Act (47 U.S.C. Section 251), to interconnect with telecommunications carriers.

In return, Kloud is obligated to comply with all Pub. Util. Code provisions, Commission rules, General Order (GOs), and decisions applicable to telephone corporations providing approved services. The applicable statutes, rules, GOs, and decisions include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Kloud is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code Section 451 which states that every public utility "...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

## **5. Transfer of Control of Vertex to Kloud**

On September 17, 2021, Kloud acquired Vertex assets and customers after the Consent Decree adopted by the Federal Communications Commission (FCC) in FCC Order DA 21-991 (FCC Order).<sup>14</sup> This FCC Order and attached Consent Decree addressed Vertex's violation of the FCC's requirements regarding the unauthorized transfer of a domestic common carrier pursuant to Section 214 of

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<sup>14</sup> January 23, 2023 Amendment to Application and May 4, 2023 Response to ALJ Ruling.

the Communications Act of 1934 (Section 214) and the Code of Federal Regulations - Title 47, Chapter 1, Subchapter B, Part 63 (Part 63). Section 214 and Part 63 address both the domestic and foreign transfer of control of a common carrier. This violation pertained to the sale of 100 percent of Vertex and Vertex SSX, Inc.<sup>15</sup> stock to Dr. Peng Holding, Inc. on March 31, 2016, without approval of the FCC. The FCC investigation into this violation was initiated on November 26, 2019 and resolved on August 13, 2021 with the issuance of the FCC Order and Consent Decree.

In part, the FCC Order and attached Consent Decree required Vertex to discontinue providing service. As a result of this requirement, Vertex transferred its assets and customers to Kloud and began operating As Kloud, while continuing to report its revenue to the Commission under Vertex license. The Commission also notes that the transfer addressed by the FCC Order and Consent Decree also violated the Commissions requirements pursuant to Pub. Util. Code Section 854(a), since Vertex did not request Commission authority for its transfer to Dr. Peng Holding, Inc.

### **5.1. Standard of Review for Transfers of Authority**

Transfers of control are, in part, governed by Pub. Util. Code Section 854(a), which requires Commission authorization before a public utility company may “merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state....” The purpose of this and related code sections is to enable the Commission, before any transfer of public

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<sup>15</sup> Vertex SSX, Inc, did not commence the provision of any telecommunications services, never had any telecommunications customers, was dormant since 2016, ceased operations and was dissolved as of December 30, 2019, and surrendered its FCC International Section 214 authorization by letter dated on January 25, 2021.

utility authority is consummated, to review the proposal and to take such action, as a condition of transfer, as the public interest may require. Absent prior Commission approval, Pub. Util. Code Section 854(a) provides that the transaction is “void and of no effect.”

The Commission has broad discretion under Pub. Util. Code Section 854(a) to approve or reject a proposed transaction. If necessary and appropriate, the Commission may attach conditions to approval of a transaction to protect and promote the public interest. The primary question in a transfer of control proceeding under Pub. Util. Code Section 854(a) is whether the transaction will be in the public interest. When the acquiring individual or company which does not have a CPCN seeks to acquire control of a company that possesses a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking the type of CPCN held by the company being acquired.

Kloud’s acquisition of Vertex, as well as the transfer addressed by the FCC Order and Consent Decree, violate Pub. Util. Code Section 854(a) as well as Rule 1.1.

## **5.2. Discussion and Conclusion**

In Section 4 above, Kloud has proven its compliance with qualifications to receive a CPCN. By considering that same data, the Commission finds that Kloud also complies with the qualifications for acquiring an entity with an existing CPCN, in this case Vertex. Therefore, the Commission approves the acquisition of Vertex by Kloud on a prospective basis from the date of this decision.

The purpose of Pub. Util. Code Section 854(a) is to enable the Commission to review a proposed acquisition, before it takes place, in order to take such

action as the public interest may require. The Commission has enacted careful guidelines for scrutiny of the owners of public utilities, and we cannot condone the transfer of control of a public utility to an owner that has not passed through our approval process in advance.

Since we grant prospective authority, Kloud's acquisition of Vertex is void under Section 854(a) for the period of time prior to the effective date of this decision. The Applicants are at risk for any adverse consequences that may result from their having completed the transfer without Commission authority. With regards to Vertex's unauthorized transfer to Dr. Peng Holding, Inc., we concur with the FCC Order and Consent Decree regarding that violation.

### **5.3. Penalty**

On October 12, 2023, a Status Conference was held, at which the assigned ALJ provided options for Kloud to resolve its acquisition of Vertex without Commission authority, including but not limited to an option for Kloud to file a motion stipulating to its violation of Pub. Util. Code Section 854 and Rule 1.1 and proposing a penalty amount.

On November 10, 2023, Kloud filed a *Motion to Stipulate of Kloud Communications, Inc.* (Motion to Stipulate), in which it stipulates to: (1) its violation of Rule 1.1 regarding its acquisition of Vertex without Commission authority; and (2) proposed a range of penalty amounts (\$2,000 - \$9,000) based on its intrastate revenues and similar past Commission decisions.

Kloud's stipulation regarding its violations of Rule 1.1 and Pub. Util. Code Section 854(a) is accepted by the Commission. We remind Kloud that it must comply with all Commission requirements in any future acquisitions of entities regulated by this Commission.

In its Motion to Stipulate, Kloud proposes a penalty range of \$2,000-\$9,000, and discusses the compliance of this range based on the criteria identified in D.98-12-075. Kloud requests that the Commission either: (1) not assess a fine; or (2) assess a fine that reflects that, in Kloud's opinion, customers were not harmed and Kloud itself did not benefit financially from the transaction.

In support of its request regarding assessment of a penalty, Kloud states that: (1) It is a small provider that disclosed the said transfer to the Commission in its application; (2) Customers of Vertex have benefitted by the continued provision of service and having the option to maintain their service at similar rates, terms and conditions to those previously provided by Vertex; (3) Customers have not been harmed; (4) Kloud has not financially benefited from the acquisition of Vertex; and (5) Kloud has submitted PPP Surcharges and User Fees since it acquired Vertex.

Pub. Util. Code Section 2107 provides that "any public utility that violates or fails to comply with any ... rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense." Accordingly, the penalty for Kloud's two offences could range from \$1,000 to \$100,000.

In assessing the reasonableness of the penalty range, we apply to the criteria set forth in D.98-12-075 for guidance, and evaluate: (1) the severity of the economic or physical harm resulting from the violation; (2) the utility's conduct to prevent, detect, disclose, and rectify the violation; (3) the utility's financial resources; (4) the public interest involved; (5) the totality of the circumstances; and (6) Commission precedents.

Based on the above criteria, the Commission evaluates the penalty amount based on the criteria identified in D.98-12-075. We also consider that the unauthorized transfer of Vertex to Kloud was the second unauthorized transfer of Vertex, the first being Vertex's unauthorized transfer to Dr. Peng Holding, Inc., indicating a tendency to violate Commission requirements.

In consideration of Kloud's financial resources, the public interest involved, Kloud's disclosure of the acquisition on its own volition,<sup>16</sup> multiple violations of both Commission and FCC requirements detailed herein, the totality of the circumstances, and the record of this proceeding, the Commission grants Kloud's Motion and Stipulation, and assesses a penalty amount of \$9,000. This penalty serves as an effective deterrence while not impacting Kloud's ability to provide safe and reliable service to its customers. Payment shall be made 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. Kloud must include a written identification stating the decision number and the application number, such as the following: "Per Decision [enter decision number here] of A.22-11-011."

## **6. CPED and Kloud Settlement Agreement for Rule 1.1 Violation**

### **6.1. Overview**

As noted above in Section 1 of this decision, CPED filed a protest to A.22-11-011, stating that Kloud had failed to disclose a prior Vertex Settlement involving current Kloud officers, thereby violating Rule 1.1 regarding disclosures in Sections 8 and 9 of A.22-11-011. This prior settlement agreement between Vertex and CPED was approved in D.16-06-009. That settlement agreement

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<sup>16</sup> A.22-11-011, Exhibit H.

addressed Vertex's failure to disclose suspensions or revocations of its operating authority in other states. At the time the prior settlement was entered into, one of Kloud's president, Jim Chiu, was also Vertex's president. CPED's protest in the current proceeding also noted that applicants are required to disclose all prior settlements involving misrepresentations to consumers, which Kloud did not do in the current proceeding.

On January 31, 2023, Kloud filed and served an Amendment to A.22-11-011, in which it disclosed the aforementioned violation.

On July 18, 2023, CPED and Kloud filed and served their Joint Motion to which the Settlement Agreement (Settlement Agreement) in the current proceeding, was attached as Exhibit A. This settlement resolves all issues raised by CPED in its protest in the current proceeding.

## **6.2. Settlement Agreement**

CPED and Kloud filed the Settlement Agreement for Commission approval pursuant to Rule 12.1.

The Settlement Agreement in the current proceeding includes a procedural background of the current proceeding, a description of the violation, the terms of the Settlement Agreement, and the reasons why the Settlement Agreement should be adopted by the Commission.

CPED and Kloud contend that the proposed Settlement, which resolves all issues in this proceeding is in the public interest, reasonable in light of the whole record and consistent with the law. The Parties explained that they entered into the Settlement Agreement in order to avoid the costs and risks of further litigation and conserve the Commission's resources. Thus, Kloud and CPED, the only parties in this proceeding, requested that the Commission approve and adopt the Settlement Agreement as a fair and reasonable resolution of the protest



to A.22-11-011, without modification. In evaluating a settlement, the Commission is guided by Rule 12.1(d).

Historically, the Commission has favored settlements as a means of resolving contested issues where the settlement is in the public interest, reasonable in light of the whole record, and consistent with the law.<sup>17</sup> Generally, the parties evaluation carries material weight in the Commission's review of a settlement.<sup>18</sup> The record of this proceeding shows that the proposed Settlement Agreement is in the public interest, consistent with the law, and is reasonable in light of the whole record in this proceeding, as further discussed below.

The proposed Settlement Agreement is in the public interest because it is consistent with the Commission's policy of supporting resolution of disputed matters through settlement, in order to avoid unnecessary expenditure of time and other resources, and the uncertainty of evidentiary hearings and litigation.

The Settlement Agreement is supported by the record in this proceeding. The Settlement holds Kloud accountable and provides consequences for Kloud's failure to disclose a prior Vertex Settlement involving current Kloud officers in violation of Rule 1.1.

The Settlement Agreement complies with all applicable statutes, including but not limited to Pub. Util. Code Section 451, which requires that utility rates must be just and reasonable. We agree that the required showings under Pub. Util. Code Sectio 451 have been made. Further, nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

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<sup>17</sup> Rule 12.1(d); *See also* D.07-05-060.

<sup>18</sup> *See In re Southern California Gas Co.* (1999) D.00-09-034, 2000 Cal. PUC LEXIS 694, at 31.

The Settlement Agreement acknowledges that Kloud failed to disclose in its application a settlement agreement for a prior violation by Vertex which the Commission approved in D.16-06-009, in violation of Rule 1.1. Importantly, Kloud agrees to fully meet its regulatory and legal obligations in California in the future.

### **6.3. Penalty**

For its violation of Rule 1.1, Kloud agreed to pay a one-time penalty of \$24,000 for violation of Rule 1.1. Payment shall be made as follows: (1) Kloud agrees to pay \$12,000 within thirty (30) days of the date the Commission issues a decision approving A.22-11-011; and (2) thereafter will pay \$1,000 by the first of every month for 12 months. Payment shall be made payable by check or money order 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. Kloud must include a written identification stating the decision number and the application number, such as the following: "Per Decision [enter decision number here] of A.22-11-011."

Additionally, Kloud agrees to comply with all applicable Commission orders, decisions, directions and rules made or prescribed by the Commission going forward; and in consideration of Kloud's full payment, CPED agrees that Kloud has remedied all violations CPED identified in this proceeding.

Based on the above criteria discussed in Section 5.3 herein, we find that the scope and severity of the economic or physical harm resulting from Kloud's violation is limited, that its failure to disclose the violation was neither intentional nor concealed, and Kloud amended A.22-11-011 in order to address the violation. In addition, our consideration of Kloud's financial resources, the public interest involved, and the totality of the circumstances, lead to the overall

conclusion that, based on the record in this proceeding the \$24,000 penalty imposed in this proceeding is reasonable. The \$24,000 represents a significant penalty, which should serve as an effective deterrence while not impacting Kloud's ability to provide safe and reliable service to its customers.

#### **6.4. Conclusion Regarding Settlement Agreement and Proposed Penalty**

Having evaluated the terms of the Settlement Agreement in light of Rule 12.1(d), the Settlement Agreement filed by CPED and Kloud fairly resolves all issues in CPED's protest, and the Commission adopts the Settlement Agreement and penalty amount of \$24,000, without modification.

### **7. Existing Vertex CPCN**

As discussed in Section 5 herein, the FCC Order and attached Consent Decree, in part, required Vertex to discontinue providing service. Therefore, Vertex no longer requires the CPCN it holds to operate in California.<sup>19</sup>

Additionally, in its April 2, 2024 Response to an Assigned ALJ Ruling, Kloud states, "If the Commission does not cancel the Vertex CPCN when it approves this Application, it is understood that Vertex would be required to submit an advice letter voluntarily relinquishing the Vertex CPCN."

Given the FCC Order requiring Vertex to discontinue providing service and Kloud's plan for Vertex to relinquish its CPCN if Kloud is granted its own CPCN, the Commission revokes Vertex's operating authority under Utility ID Number, U6786C.

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<sup>19</sup>On October 6, 2005, D.05-10-006 was adopted granting Vertex a CPCN operating authority as a reseller of Competitive Local Exchange services. On June 9, 2016, D.16-06-009 was adopted granting Vertex authority to expand the scope of its CPCN to provide full facilities-based local exchange service and interexchange services.

**8. Request to File Under Seal**

In its November 13, 2023, March 21, 2024, and April 2, 2024 Law and Motions, Kloud requests, pursuant to Rule 11.4, Pub. Util. Code Section 583, and GO 66-D, confidential treatment of: (1) Attachments 1 and 2 to its November 13, 2023 Motion to Stipulate; and (2) its March 21, 2024 and April 2, 2024 Responses to Assigned ALJ Rulings. Kloud represents that this information is sensitive and valuable. Disclosure of such information could place Kloud at an unfair business disadvantage. The Commission granted similar requests in the past and does so here.

**9. Summary of Public Comments**

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

No public comments were submitted in this proceeding.

**10. Comments on Draft Decision**

As provided by Rule 14.3 of the Commission’s Rules and Pub. Util. Code Section 311(g)(1), the draft decision of the ALJ in this matter was mailed to the parties on \_\_\_\_\_. Comments were filed on \_\_\_\_\_.

**11. Assignment of Proceeding**

Matthew Baker is the assigned Commissioner and Seaneen McCarthy Wilson is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Kloud is a telephone corporation and a public utility as defined in Pub. Util. Code Sections 216 and 234(a).

2. By D.05-10-006 Vertex was granted a CPCN as a reseller of Competitive Local Exchange services.

3. By D.16-06-009 the Commission found that Vertex is a telephone corporation.

4. Kloud submitted an application for registration as an interexchange telephone corporation which is being evaluated under Pub. Util. Code Section 1001.

5. A protest to A.22-11-011 was filed by the CPED on December 14, 2022, asserting that Kloud violated Rule 1.1 for Kloud's failure to disclose a prior Vertex Settlement involving current Kloud officers and CPED.

6. On February 22, 2023, a Notice of Reassignment was filed by then Acting Chief ALJ Cooke, removing this application from the simplified registration process.

7. Kloud will not construct any facilities.

8. Kloud has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

9. Kloud has sufficient additional cash or cash equivalent to cover deposits that may be required by other telephone corporations in order to provide the proposed service.

10. Kloud's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

11. Other than the disclosures addressed in this application, no one associated with or employed by Kloud as an affiliate, officer, director, partner, agent, or owner (directly or indirectly) of more than 10 percent of Kloud, or anyone acting in a management capacity for Kloud: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found

liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of Section 17000 *et seq.*, Section 17200 *et seq.*, or Section 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

12. Other than the disclosures made and addressed in this application, to the best of Kloud's knowledge, neither Kloud, or any affiliate, officer, director, partner, nor owner of more than 10 percent of Kloud, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the FCC or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

13. Kloud requested and is eligible for exemption from tariffing requirements.

14. Kloud provided an estimate of its customer base for the first and fifth year of operation.

1. The president of Kloud, Jim Chiu, was also president of Vertex.

2. On March 31, 2016, Vertex and Vertex SSX, Inc. stock was transferred to Dr. Peng Holding, Inc., without approval from the FCC or the Commission.

3. On November 26, 2019, the FCC initiated its investigation into the transfer of Vertex and Vertex SSX, Inc. to Dr. Peng Holding, Inc. without FCC authority. On August 13, 2021, by the FCC Order and Consent Decree, the investigation into the transfer of Vertex and Vertex SSX, Inc. to Dr. Peng Holding, Inc. was resolved.

4. Kloud acquired Vertex without Commission authority on September 17, 2021.

5. In part, the FCC Order and attached Consent Decree required Vertex to discontinue providing service.

6. Vertex transferred its assets and customers to Kloud without Commission approval.

7. After September 17, 2021, Kloud continued to operate in California using Vertex's utility ID (U6786C).

8. Vertex failed to disclose either Vertex's prior transfer of control to Dr. Peng without Commission or FCC approval or the FCC's subsequent investigation of Vertex in its original application for a registration.

9. Transfers of control are, in part, governed by Pub. Util. Code Section 854(a), which requires Commission authorization before a public utility company may "merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state...."

10. Kloud started providing VoIP service on September 17, 2021.

11. Between September 17, 2021 and the present, Kloud provided VoIP service in California without a VoIP registration pursuant to Pub. Util. Code

Section 285, a registration pursuant to Pub. Util. Code Section 1013, or a CPCN pursuant to Pub. Util. Section 1001.

12. Between September 17, 2021 and the present, Kloud earned intrastate revenue from customers subject to surcharge assessments.

13. Between September 17, 2021 and the present, Kloud accrued 10 percent interest on public purpose program surcharges owed pursuant to GO 153.

14. The Commission evaluates penalty amounts based on the criteria identified in D.98-12-075.

15. On July 18, 2023, Kloud and CPED filed and served their Joint Motion requesting approval of their Settlement Agreement regarding all issues protested by CPED, as well as a penalty amount. In particular, the current Settlement Agreement addresses Kloud's failure to disclose a prior settlement agreement between Vertex and CPED which was approved in D.16-06-009. That settlement agreement addressed Vertex's failure to disclose suspensions or revocations of its operating authority in other states. At the time the prior settlement was entered into, one of Kloud's president, Jim Chiu, was also Vertex's president.

16. All issues protested by CPED are encompassed by, and resolved in, the Settlement Agreement.

17. The parties to the Settlement Agreement are the only parties in this proceeding.

18. The Settlement Agreement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

19. The Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.



20. On November 13, 2023, Kloud filed a Motion to Stipulate regarding its violation of Pub. Util. Code 854 as a result of its acquisition of Vertex without Commission authority.

21. The Motion to Stipulate also included a proposed penalty amount of between \$2,000 and \$9,000.

22. The Commission evaluates the range of penalty amounts proposed in the Motion to Stipulate, based on the criteria identified in D.98-12-075, as well as the fact that the unauthorized transfer of Vertex to Kloud was the second unauthorized transfer of Vertex the first being Vertex's unauthorized transfer to Dr. Peng Holding, Inc..

23. On November 13, 2023, Kloud requested that confidential materials, including Attachments 1 and 2 to its Motion to Stipulate, be treated as confidential and filed under seal pursuant to Rule 11.4, Pub. Util. Code Section 583, and GO 66-D.

24. On March 21, 2024 and April 2, 2024, Kloud requested that the confidential version of its responses to assigned ALJ rulings filed and served on those dates, be treated as confidential and filed under seal pursuant to Rule 11.4, Pub. Util. Code Section 583, and GO 66-D.

### **Conclusions of Law**

#### Kloud's Licensing

1. Kloud should be granted a CPCN to provide resold interexchange services in California, subject to the terms and conditions set forth in the OPs.

2. Kloud, once granted a CPCN, should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.

3. Kloud should be granted resold interexchange authority and may not construct any facilities, including equipment in existing buildings or structures.

4. Commission decisions in R.22-08-008 may impact the licensing status of Kloud as a provider of VoIP services.

5. In order to ensure that Kloud maintains its financial requirements, Kloud should be required to provide the Commission's Communications Division with updated financial documentation both six and 12 months from the issuance date of this decision by email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov).

6. Kloud is exempt from tariffing. In the future, if Kloud decides to offer services that require a tariff or schedule, such as basic service, Applicant should submit proposed tariffs and/or user guides to the Commission's Communications Division via Tier 2 Advice Letters using the General Order 96-B advice letter process at least 30 days before initiation of service.

Kloud's Prior Provision of Service Without Commission Authority

7. Kloud should pay all past-due public purpose program surcharges on intrastate revenues earned on its VoIP service provided between September 17, 2021, and the present pursuant to Pub. Util. Code Section 285 and D.22-10-021.

8. Kloud should pay 10 percent interest on past-due public purpose program surcharges accrued between September 17, 2021, and September 13, 2021, the filing date of Kloud's application for a registration.

9. Kloud should provide the Commission's Communications Division (CD) with a summary of: (1) its monthly intrastate revenues from September 17, 2021 to March 31, 2023, and (2) the monthly number of active access lines from April 1, 2023 to the effective date of the decision. This information should be sent with the subject line "Surcharge Prior to CPCN

Approval Per [Insert Decision Number here, *e.g.*, **D.24-XX-XXX**], A.22-11-011” by sending one e-mail to both [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov) and [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) within 30 days of the issuance date of this decision.

10. CD should be authorized to calculate the amount owed by Kloud for public purpose program surcharges and late fees owed for VoIP service provided between September 17, 2021, and the present using the surcharge mechanism applicable at the time the surcharge was incurred.

11. In its determination of revenues earned and PPP surcharges owed, CD should consider all amounts already reported and/or paid.

12. Kloud should, within 30 days of its receipt of the total amount owed for public purpose program surcharges and interest from CD, submit one cashier’s check or money order payable to the California Public Utilities Commission for payment of the total amount owed either by mail or in person delivery to: California Public Utilities Commission, Fiscal Office, Room 3000, 505 Van Ness Avenue, San Francisco, CA 94102. Kloud should include a written identification stating the decision number and the application number, such as the following: “Per Decision [**enter decision number here**] of A.22-11-011.” Kloud will email CD of payment made at [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov).

13. Failure to remit past due surcharges and interest owed within 90 days of the payment deadline should result in additional collections or enforcement action against Kloud.

Sale of Vertex to Dr. Peng Holding Inc.

14. On March 31, 2016, Vertex violated Section 214 of the Communications Act of 1934 (Section 214) and the Code of Federal Regulations - Title 47, Chapter 1, Subchapter B, Part 63 (Part 63) for transferring control of Vertex and

Vertex SSX, Inc. stock to Dr. Peng Holding, Inc., without approval of the FCC or the Commission.

15. Vertex also violated Pub. Util. Code Section 854(a) for transferring control of Vertex to Dr. Peng Holding Company without Commission approval.

16. The Settlement Agreement between CPED and Kloud resolving the Rule 1.1 violation is reasonable in light of the whole record, consistent with law, in the public interest and should be approved.

17. The Commission should assess a penalty of \$24,000 on Kloud for violating Rule 1.1 as detailed in the Settlement Agreement.

18. Vertex's operating authority under Utility ID Number (U6786C) should be retired.

Transfer of Control of Vertex to Kloud on a Prospective Basis

19. Kloud violated Pub. Util. Code Section 854 for transferring control of Vertex's customers to Kloud without prior Commission approval on September 17, 2021.

20. The Commission should grant Kloud's Motion to Stipulate based on its admission to violating Pub. Util. Code Section 854.

21. The Commission should assess a penalty of \$9,000 due to Kloud's violation of Rule 1.1 and Pub. Util. Code 854(a) as a result of its acquisition of Vertex without Commission authority as reasonable pursuant to Pub. Util. Code Section 2107, and D.98-12-075, and consideration that this was the second of two unauthorized transfers of Vertex.

22. The Commission should approve the acquisition of Vertex by Kloud on a prospective basis from the effective date of this decision.

Other

23. Kloud's request to file under seal including: (1) Attachments 1 and 2 to its Motion to Stipulate; and (2) its March 21, 2024 and April 2, 2024 Responses to Assigned ALJ Rulings, should be granted for three years.

24. A.22-11-011 should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to Kloud Communications, Inc. to provide resold interexchange services in California, subject to the terms and conditions in this decision.
2. The acquisition of Vertex Telecom, Inc. by Kloud Communications, Inc., is granted on a prospective basis from the issuance date of this decision.
3. Vertex Telecom, Inc.'s operating authority granted under Utility Identification Number (U6786C) is revoked.
4. The Motion of the Consumer Protection and Enforcement Division and Kloud Communications, Inc. for approval of the settlement agreement is granted.
5. The Settlement Agreement between Kloud Communications, Inc. and the Consumer Protect and Enforcement Division is approved, as shown in Attachment F.
6. Kloud must pay a penalty of \$24,000 to the California Public Utilities Commission by check or money order mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102 as follows: (1) Kloud shall pay \$12,000 within 30 days of the issuance date this decision; and (2) thereafter shall pay \$1,000 by the first of every month for 12 months. Kloud will include a written identification stating the decision number and the application number, such as the following: "Per Decision [enter

decision number here] OP \_\_\_\_ of A.22-11-011.” Kloud will email CD of payment made at [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov).

7. The Commission grants the Motion to Stipulate of Kloud Communications, Inc.

8. Kloud must pay a penalty of \$9,000 to the California Public Utilities Commission by check or money order mailed or delivered to the Commission’s Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102 within 60 days of the issuance date of this decision. Kloud will include a written identification stating the decision number and the application number, such as the following: “Per Decision [enter decision number here] OP \_\_\_\_ of A.22-11-011.” Kloud will e-mail CD of payment made at [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov).

9. Kloud Communications, Inc. must remit public purpose program surcharges owed to the California Public Utilities Commission in accordance with the established methodology in effect at the time the surcharge was accrued, along with accrued interest on late remittance of past-due surcharges prior to the filing date of this application.

10. Within 30 days of the effective date of this decision, Kloud Communications, Inc. (Kloud) must provide the California Public Utilities Commission’s Communications Division with a summary of: (1) its monthly intrastate revenues from September 17, 2021 to March 31, 2023 and (2) the monthly number of active access lines from April 1, 2023 to the effective date of this decision by emailing [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov) and copying [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) in the communication. Kloud will provide this information by completing the form included as Attachment E.

11. The California Public Utilities Commission’s Communications Division (CD) is authorized to calculate the public purpose program surcharges owed by

Kloud Communications, Inc. between September 17, 2021, and the issuance date of this decision, along with any interest owed between September 17, 2021 and November 8, 2022, for late remittance of past-due surcharges prior to the filing date of this application. In its determination of revenues earned and public purpose program surcharges owed, CD shall consider all amounts already reported and/or paid.

12. Kloud Communications, Inc. (Kloud) will, within 30 days of its receipt of the total amount owed for public purpose program surcharges and interest from the California Public Utilities Commission's Communications Division (CD), send one cashier's check or money order for payment of the total amount owed to: California Public Utilities Commission, Fiscal Office, Room 3000, 505 Van Ness Avenue, San Francisco, CA 94102. Kloud will include a written identification stating the decision number and the application number, such as the following: "Per Decision [enter decision number here] OP \_\_\_\_ of A.22-11-011." Kloud will inform the CD that payment has been made within one day of emailing or otherwise submitting payment by e-mail to [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov).

13. Kloud Communications, Inc. will be subject to additional collections or enforcement action in the event it fails to pay the past-due public purpose program surcharges and interest owed within 90 days of the payment deadline.

14. The certificate of public convenience and necessity is granted and the authority for Kloud Communications, Inc. to render service to customers under the rates, charges, and rules authorized, will expire if not exercised, by offering or actively providing service on a wholesale and/or resale basis, after 12 months from the effective date of this decision. Kloud Communications, Inc. is responsible for seeking approval for an extension of time to comply with this

decision pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure.

15. Kloud Communications, Inc. is assigned utility identification number U-7439-C and is responsible for using this as its corporate identification number in the caption of all original filings with the California Public Utilities Commission (Commission), in the titles of other pleadings filed in existing cases, and informal submissions to the Commission.

16. Kloud Communications, Inc. must file in this docket a written acceptance of the certificate of public convenience and necessity granted in this proceeding within 30 days of the effective date of this decision as a compliance filing. The written acceptance filed in this docket does not reopen the proceeding.

17. Kloud Communications, Inc. must provide the name, address, email address, and telephone number of its designated primary regulatory/official contact person to the California Public Utilities Commission's Communications Division within five days of written acceptance of its certificate of public convenience and necessity. Refer to Attachment B for additional information related to updating contact information.

18. Kloud Communications, Inc. must provide the name, address, email address, and telephone number of its designated contact person for purposes of resolving consumer complaints to the California Public Utilities Commission's Consumer Affairs Branch within five days of written acceptance of its certificate of public convenience and necessity. Refer to Attachment B for additional information related to updating contact information.

19. Kloud Communications, Inc. (Kloud) must submit a Tier 1 Advice Letter containing a copy of the license holder's executed performance bond in accordance with Decision 13-05-035 to the California Public Utilities



Commission's Communications Division within five business days of the effective date of this decision. Kloud is responsible, if needed, for seeking approval for an extension of time to submit the Tier 1 Advice Letter containing a copy of the performance bond. Kloud is responsible for ensuring that the performance bond is active for all periods of its operations and complying with the annual performance bond filing on or before March 31 of each year. Refer to Attachment B for additional information on performance bond requirements.

20. Kloud Communications, Inc. must submit its compliance with Public Utilities Code Section 708, Employee Identification Cards, to the California Public Utilities Commission's Director of the Communications Division in writing by email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) within 60 days of the effective date of this decision.

21. Kloud Communications, Inc. is subject to California public purpose program surcharges and user fees; and is responsible for timely reporting and remittance of surcharges and user fees using the California Public Utilities Commission's proprietary Telecommunications and User Fee Filing System. Refer to Attachment B for additional information on surcharges and user fees requirements.

22. Kloud Communications, Inc. is responsible for submitting an annual report in accordance with General Order 104-A to the California Public Utilities Commission's Director of the Communications Division by email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) no later than March 31 of the year following the calendar year for which the annual report is submitted. Refer to Attachment C for additional information on annual report requirements.

23. Kloud Communications, Inc. is responsible for submitting its annual affiliate transaction report in accordance with Decision 93-02-019 to the

California Public Utilities Commission's Director of the Communications Division by email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) no later than May 1 of the year following the calendar year for which the annual affiliate transaction report is submitted. Refer to Attachment D for additional information on annual affiliate transaction report requirements.

24. Kloud Communications, Inc. is subject to all the current requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B-D to this decision; all Consumer Protection Rules contained in General Order 168; and all applicable California Public Utilities Commission rules, General Orders, decisions, and statutes that pertain to California public utilities on an ongoing basis.

25. Kloud Communications, Inc.'s (Kloud) request to file under seal its: (1) Attachment 1 and 2 to its November 13, 2023 Motion to Stipulate of Kloud Communications, Inc.; and (2) its March 21, 2024 and April 2, 2024 Responses to Assigned ALJ Rulings, is granted for a period of three years after the date of this decision. During this three-year period, this information shall not be publicly disclosed except on further Commission order or ALJ ruling. If Kloud believes that it is necessary for this information to remain under seal for longer than three years, Kloud may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

26. Application 22-11-011 is closed.

This decision is effective today.

Dated \_\_\_\_\_, at San Luis Obispo, California.

**ATTACHMENT A**  
**TARIFF DEFICIENCIES**

This Attachment is Intentionally Left Blank.

**(END OF ATTACHMENT A)**

**ATTACHMENT B****REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS (Carrier)**

1. Carrier is subject to all the current applicable California Public Utilities Commission (CPUC or Commission) rules, decisions, General Orders, and statutes that pertain to California public utilities and telephone corporations on an ongoing basis.

2. Carrier is responsible for rendering services to customers under the rates, charges and rules authorized by the Commission within 12 months from the date of the decision. Rendering services may include but are not limited to offering and/or actively providing services to its customers on a wholesale and/or resale basis.

3. Carrier is responsible for keeping all contact information up to date with the Commission. Changes to its primary regulatory and/or complaint contact information must be provided electronically, using the “Contact Information Request Update” form at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone> under Service Provider Requirements and Programs. Carrier is responsible for updating this information within 30 days of the change, or at least annually by June 1 of each calendar year.

4. Carrier is subject to California public purpose program surcharges and user fees. Pursuant to Decision (D.) 22-10-021, all telephone corporations operating in California must assess, collect, report and remit public purpose program surcharges based on the number of active access lines. For definition of access line, see Section 5.2.2 of D.22-10-021. The surcharge funds the following California public purpose programs:

- a. The Universal Lifeline Telephone Service Trust  
Administrative Committee Fund (Pub. Util. Code § 277);

- b. The California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 275.6); D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (Pub. Util. Code § 276.5), D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (Pub. Util. Code § 281; D.07-12-054); and
- f. The California Teleconnect Fund (Pub. Util. Code § 280; D.96-10-066, at 88, App. B, Rule 8.G).

User Fees must be assessed and collected based on intrastate telecommunications revenues. The User Fee funds the CPUC's annual operating budget for regulating the telecommunications corporations under its jurisdiction (Pub. Util. Code §§ 431-435).

5. Carrier is responsible for obtaining guidance and directive from the Commission's Communications Division for timely reporting and remitting of public purpose program surcharges and the user fees through the Commission's proprietary Telecommunications and User Fee Filing System (TUFFS).

Additional information about telecommunications surcharges and user fees is available from the CPUC website: <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/telecommunications-surcharges-and-user-fees>.

6. Carrier is responsible for timely and accurately reporting its number of access lines and remitting the resulting public purpose program surcharges through TUFFS even if there is zero (0) access line to report and zero (0) resulting surcharges to remit. Carriers that report and/or remit surcharge funds after the due date will be charged a penalty equal to an annual rate of 10%. Send an email to [Telcosurcharge@cpuc.ca.gov](mailto:Telcosurcharge@cpuc.ca.gov) for questions related to surcharges and access to

TUFFS. Current and historical surcharge rates can be found at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/telecommunications-surcharges-and-user-fees/surcharge-rates>.

7. Carrier is responsible for timely and accurately reporting and remitting the user fees based on a standard user fee remittance rate applied to the gross intrastate revenue or an annual minimum user fee of \$100, whichever is greater. The user fee remittance rate is determined annually by the Commission and posted on the Commission's webpage. The reporting and remittance of user fees must be through TUFFS within 15 days after the end of each calendar quarter (March 31, June 30 and September 30, and December 31) or January 15 due date for those paying the annual minimum user fee of \$100. TUFFS will automatically adjust the minimum user fee amount due to \$100 when the annual gross intrastate revenue is zero (\$0) or less than the annual minimum user fee of \$100. Under Pub. Util. Code Section 405, carriers that are in default of reporting and submitting user fees more than 30 days after the quarterly user fee payment due dates of April 15, July 15, October 15, and January 15, or more than 30 days after the January 15 due date for those utilities paying the annual minimum user fee of \$100, will be subject to automatic penalties including suspension or revocation of their authority to operate in California. Send an email to [userfees@cpuc.ca.gov](mailto:userfees@cpuc.ca.gov) for questions related to user fees. Current and historical user fee rates can be found at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/telecommunications-surcharges-and-user-fees/user-fee-rates>.

8. In compliance with Resolution T-16901, December 2, 2004, Carrier is responsible for checking the joint tariff for public purpose program surcharges and user fees filed by Pacific Bell (dba AT&T California) and apply the current

public purpose program surcharges and user fees amounts in that joint tariff on end-user bills until further revised.

9. Carrier is responsible for ensuring that its tariff filings reflect all surcharges and fees to which it is subject to, as identified above.

10. If Carrier is a competitive local exchange carrier, the effectiveness of its future competitive local exchange carrier tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

11. If Carrier is a non-dominant interexchange carrier, the effectiveness of its future non-dominant interexchange carrier tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

12. Carrier providing competitive local exchange service is responsible for submitting a service area map as part of its initial tariff filed via Advice Letter to the Communications Division.

13. Carrier is responsible for submitting a copy of its complete tariff in use to the California Public Utilities Commission's Director of the Communications Division, by e-mail to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov), in compliance with Public Utilities Codes Section 489(a), no later than February 15 of each year. If Carrier is de-tariffed, it is responsible for providing an annual certification that it is granted exemption from tariff filing or is a de-tariffed carrier and identify the authorization granting such status.

14. Carrier is responsible for obtaining a performance bond of at least \$25,000 in accordance with Decision 13-05-035. Within five business days after the effective date of CPCN authority, carrier is required to submit a Tier-1 advice letter to the Director of the Communications Division with a copy of the license holder's executed bond. 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. Pursuant to Decision 13-05-035, the Commission must revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

15. Carrier is required to submit a Tier-1 Advice Letter on an annual basis, no later than March 31 of each year, with a copy of the executed performance bond. Carrier is responsible for ensuring that its performance bond does not lapse during any period of its operation. Additional information regarding performance bond requirement is available at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/carrier-reporting-requirements/performance-bond-requirements>.

16. Carrier is responsible for ensuring that its employees comply with the provisions of Pub. Util. Code Section 2889.5 regarding solicitation of customers.

17. If Carrier is 90 days or more late in complying with its reporting obligations to the Commission including but not limited to filing its annual reports (e.g., Operations and Financials, and Affiliated Transaction Reports), submitting Performance Bonds, reporting and remitting surcharges and user fees; and has not received written permission from the Commission or Communications Division to file or remit late, the Communications Division may issue a citation pursuant to Resolution T-17601. Failure to comply with the issued citation or timely appeal the citation may result in a revocation of the company's operating authority and/or a referral to the Commission's Consumer Protection and Enforcement Division (CPED) for enforcement action, which could result in additional fines, penalties, or other sanctions.

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

19. Carrier is exempt from Pub. Util. Code Sections 816-830.

20. If Carrier decides to discontinue service or file for bankruptcy, it must immediately notify the California Public Utilities Commission's Director of the Communications Division, by e-mail to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov).

**(END OF ATTACHMENT B)**

## **ATTACHMENT C**

**ATTACHMENT C**  
**ANNUAL REPORT**

In addition to the annual reports requirement pursuant to General Order 104-A, submit the following information electronically via email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) no later than March 31 of the year following the calendar year for which the annual report is submitted.

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

Required information:

1. Exact legal name and Utility ID number of the reporting utility.
2. Address of the reporting utility.
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 31 of the calendar year for which information is submitted, for California operations only.

Additional information about the reporting requirements is available at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/carrier-reporting-requirements/annual-report-forms>. For any questions concerning this report, please send an email to [cdcompliance@cpuca.ca.gov](mailto:cdcompliance@cpuca.ca.gov) with a subject line that includes: "CD Annual Reports."

**(END OF ATTACHMENT C)**

## **ATTACHMENT D**

## **ATTACHMENT D**

### **CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

Submit the following information electronically using the Annual Affiliate Transaction Report Form<sup>20</sup> via e-mail to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) no later than May 1 of the year following the calendar year for which the annual affiliate transaction 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 item 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

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<sup>20</sup> An Annual Affiliate Report form (in PDF format) has been developed to help facilitate the submission of this reporting obligation and it is available at: <https://www.cpsc.ca.gov/-/media/cpsc-website/divisions/communications-division/documents/licensing-compliance/annual-reporting-requirements/annual-affiliate-transaction-report-form.pdf>.

4. requirements of item 1 and item 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.
5. 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.
6. Any required information, documents, or other material that a utility is unable to provide must be reasonably described and the reasons they cannot be obtained, as well as the efforts expended to obtain them, 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.
7. Utilities that do not have affiliated entities must submit, 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.

Additional information about the reporting requirements is available at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/carrier-reporting-requirements/annual-report-forms>. For any questions concerning this report, please send an e-mail to [cdcompliance@cpuca.ca.gov](mailto:cdcompliance@cpuca.ca.gov) with a subject line that includes: "CD Annual Reports."

**(END OF ATTACHMENT D)**



**ATTACHMENT E**

**ATTACHMENT E**

**SURCHARGE REPORT**

Email the following information to [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov) and [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov).

**Subject Line** should include “Surcharge Prior to CPUC Approval Per D.24-XX-XXX, A.22-10-017.”

**Body of email should include:**

1. Carrier Name
2. Date of Operation without License
3. Date Issuance of the Decision
4. Monthly Intrastate Revenue report prior to April 2023

	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>January</b>	n/a		
<b>February</b>	n/a		
<b>March</b>			
<b>April</b>			n/a
<b>May</b>			n/a
<b>June</b>			n/a
<b>July</b>			n/a
<b>August</b>			n/a
<b>September</b>			n/a
<b>October</b>			n/a
<b>November</b>			n/a
<b>December</b>			n/a

5. Number of Active Access Line from April 2023 to Issuance of this Decision.  
See Section 5.2.2 of D.22-10-021 for definition of access line.

	<b>2023</b>	<b>2024</b>
<b>January</b>	n/a	
<b>February</b>	n/a	
<b>March</b>	n/a	
<b>April</b>		
<b>May</b>		
<b>June</b>		
<b>July</b>		
<b>August</b>		

<b>September</b>		
<b>October</b>		
<b>November</b>		
<b>December</b>		

**(END OF ATTACHMENT E)**

A.22-11-011 ALJ/SMW/**PROPOSED DECISION**

**ATTACHMENT F**

**SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT BETWEEN  
KLOUD COMMUNICATIONS, INC.  
AND THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION**

Pursuant to Article 12 of the Commission's Rules of Practice and Procedure (Rules), the Consumer Protection and Enforcement Division (CPED) and Kloud Communications, Inc. (Kloud) (collectively referred to hereafter as ("the Settling Parties")) respectfully submit to the Commission this Settlement Agreement (Settlement). The instant Settlement fully resolves all CPED's issues identified in its protest to Kloud's Application, including violations of Rule 1.1 for failure to fully disclose relevant information, and potentially misleading the Commission.

**I. BACKGROUND**

On November 8, 2022, Kloud filed Application (A.) 22-11-011 (Application) seeking Commission authority to operate as an interconnected Voice over Internet Protocol ("VoIP Provider") and is doing so pursuant to the Commission's current procedures which is to apply under California Public Utilities Code (P.U. Code) § 1013. Kloud is a California company with its principal place of business located at 169 W. Pomona Ave., Monrovia, CA 91016. In its Application, Kloud seeks authority to operate as a switchless reseller of interconnected VoIP services in the State of California.

On December 14, 2022, CPED filed a protest identifying the following violations by Kloud:

- Kloud made misleading statements in its Application which failed to disclose a prior settlement agreement between CPED and Kloud's affiliate, Vertex Telecom Inc. (Vertex) in 2016. The substance of that prior settlement agreement involved Vertex's failure to disclose violations in its application. Vertex and Kloud share identical officers as President and Vice President of the respective companies, therefore the information was relevant and should have been included in Kloud's application.

The failure to disclose important information in its Application and its attempt to mislead the Commission constitute a violation of Rule 1.1.

Kloud provided a response to CPED's Protest and Kloud expressed interest in working with CPED to address and resolve deficiencies in its Application, consistent with the Commission's guidelines. On or about June 2, 2023, the Settling Parties reached a settlement in principle. Based on the instant Agreement, CPED believes that Kloud is qualified to hold the authorizations it has applied for in its Application.

The following are the settlement terms between the Settling Parties:

**II. SETTLEMENT TERMS AND CONDITIONS**

1. Kloud agrees to pay a one-time penalty of \$24,000 for violation of Rule 1.1. Payment shall be made as follows: Kloud agrees to pay \$12,000 within thirty (30) days of the date the Commission issues a decision approving the Application, and thereafter will pay \$1,000 by the first of every month for twelve months. Payment shall be made 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.
2. Kloud agrees to comply with all applicable orders, decisions, directions and rules made or prescribed by the Commission going forward.
3. In consideration of Kloud's full payment, CPED agrees that Kloud has remedied all violations CPED identified in this proceeding.

Subject to Kloud's ongoing compliance with the terms of this settlement, CPED does not oppose granting the Application of Kloud to provide the services set forth in its Application.

**Reasonableness**

The Settling Parties submit that this Settlement complies with the Commission's requirements that settlements be reasonable, consistent with law, and in the public interest.<sup>1</sup> The Settling Parties have recognized that there is risk involved in litigation, and that a party's filed position might not prevail, in whole or in part, in the Commission's final determination. The Settling Parties have reached compromise positions that they believe are appropriate in light of the litigation risks. This Settlement reflects the Settling Parties' best judgments as to the totality of

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<sup>1</sup> Commission's Rules of Practice and Procedure, Rule 12.1(d).

their positions and risks, and their agreement herein is explicitly based on the overall results achieved. Per the Settlement reached in good faith between CPED and Kloud, CPED believes that the Settlement is reasonable and results in Kloud being fit to operate in California.

The Settling Parties agree jointly by executing and submitting this Settlement that the relief requested herein is just, fair and reasonable, and in the public interest.

**Non-Precedential Effect**

This Settlement is not intended by the Settling Parties to be precedent for any future proceeding. The Settling Parties have assented to the terms of this Settlement only for the purpose of arriving at the terms embodied in this Settlement. The Settling Parties have agreed upon the resolution of the issues addressed in the Settlement Agreement on the basis that its approval by the Commission should not be construed as an admission or concession by either Party regarding any matter of fact or law that may have been in dispute in this proceeding.

**Indivisibility**

This Settlement embodies compromises of the Settling Parties' positions. No individual term of this Settlement is assented to by any of the Settling Parties, except in consideration of the other Settling Parties' assents to all other terms. Thus, the Settlement is indivisible and each part is interdependent on each and all other parts. Any party may withdraw from this Settlement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Settling Parties agree to negotiate in good faith with regard to any Commission ordered changes to the Settlement in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

The Settling Parties acknowledge that the positions expressed in the Settlement were reached after consideration of all positions of the Settling Parties. This document sets forth the entire agreement of the Settling Parties on all of those issues, except as specifically described within the Settlement. The terms and conditions of this Settlement may only be modified in writing subscribed by all Settling Parties.

**No Personal Liability**

The Settling Parties agree that no signatory to the Settlement Agreement assumes any personal liability as a result of his or her execution of this document. All rights and remedies of the Settling Parties with respect to the Settlement Agreement are limited to those available before the Commission.

**END OF SETTLEMENT AGREEMENT – CONTINUED FOR SIGNATURE PAGE**



Signature Page

**Consumer Protection and Enforcement Division**

By: 

Jeanette Lo, Chief  
Utility Enforcement Branch  
505 Van Ness Ave  
San Francisco CA 94102  
United States

Dated: 7/18/2023

**Kloud Communications, Inc.**

By: 

Jim Chiu  
President, Kloud Communications, Inc.  
168 W. Pomona Ave.  
Monrovia, CA 91016  
T: 213-966-1998  
E: jim.chiu@kloudcomm.com

Dated: 7/13/23

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**(END OF ATTACHMENT F)**