

Decision 17-09-003 September 14, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Tierzero for Registration as an
Interexchange Carrier Telephone Corporation
pursuant to the Provisions of Public Utilities
Code Section 1013.

Application 16-04-020

DECISION GRANTING REQUEST FOR WITHDRAWAL OF APPLICATION

Summary

This decision grants Tierzero's request to withdraw its application.

Application 16-04-020 is closed.

1. Background

On April 19, 2016, Tierzero filed an application for a registration license to operate as a non-dominant interexchange carrier telephone corporation (NDIEC) pursuant to Public Utilities Code Section 1013 et seq.¹ The application was filed pursuant to the registration process adopted in Decision (D.) 97-06-107, as modified by D.10-09-017 and D.11-09-026.

On May 26, 2016, the Consumer Protection and Enforcement Division (CPED)² filed a protest to Tierzero's application. CPED alleged that Tierzero

¹ All subsequent section references are to the Public Utilities Code.

² The protest was submitted by the Commission's Utility Enforcement Branch (UEB), which was part of the Commission's Safety and Enforcement Division. As of June 1, 2016, UEB has been combined with other branches to form CPED.

failed to disclose multiple facts required to be provided in its application relevant to its fitness to operate as an NDIEC. Among other things, CPED alleged that Tierzero failed to properly disclose that Tierzero's Chief Executive Officer and President, John Carter, had a felony criminal history and had filed for bankruptcy twice involving previously owned or managed companies. CPED also alleged that there was additional information showing Tierzero's lack of fitness, including Tierzero owing Digital Voice Service (DVS) surcharge payments to the California Public Utilities Commission (Commission) for the time period of July 2015 to the present. CPED recommended that the Commission consider imposing penalties against Tierzero for violations of Sections 270 and 285 and Rule 1.1 of the Commission's Rules of Practice and Procedure. CPED also requested that the Commission make a determination as to the amount of delinquent surcharges accrued and appropriate fines that should be assessed under Sections 405, 2107, and 2108.

On November 21, 2016, Tierzero submitted a request for withdrawal of its application in response to CPED's protest.

On December 2, 2016, CPED filed an opposition to Tierzero's request for withdrawal. CPED asserts that Tierzero's request should be denied because: (1) Tierzero did not provide justification for its withdrawal, and (2) applicants should not be allowed to provide incomplete applications to the Commission without consequences. CPED states that Tierzero has become current in its DVS surcharge payments since the filing of CPED's protest.³ However, CPED requests that this proceeding continue so that the Commission can consider

³ CPED Opposition at 2.

imposing penalties for violations of Rule 1.1 due to the incomplete information provided in Tierzero's application.

2. Discussion

We grant Tierzero's request to withdraw its application. We have carefully considered the arguments presented in CPED's opposition but do not find a compelling reason to continue to process Tierzero's application given that Tierzero no longer seeks operating authority as an NDIEC. Moreover, Tierzero has become current in its DVS surcharge payments.

However, we do not take lightly the allegations raised by CPED in its protest. Therefore, based on the circumstances of this case and to ensure a complete record and encourage efficient use of Commission resources in the future, we dismiss this case with the following condition: The Applicant and/or any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than ten percent of applicant, or anyone acting in a management capacity for applicant, shall reference this application, CPED's protest to the application, and this decision, in any future applications that they, together or separately, make to the Commission, on behalf of Tierzero or any other entity, for authorization to provide telecommunications services in California.

3. Categorization and Need for Hearing

In Resolution ALJ 176-3377, dated May 12, 2016, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. There is no need to change the preliminary determinations.

4. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code

and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 4, 2017 by CPED. No reply comments were filed.

In its comments, CPED requests that the Commission make two edits to the proposed decision to prevent any confusion or ambiguity regarding what is required for future applications. First, CPED requests that the Commission clarify that Ordering Paragraph 1 applies to any future applications for authorization to provide telecommunications services in California whether filed on behalf of Tierzero or any other entity. We have modified the proposed decision to make this clarification.

Secondly, CPED requests that the final decision contain language requiring an officer from Tierzero to provide, within 30 days of the Commission's adoption of a final decision in this proceeding, a declaration served on all parties to the proceeding stating that Tierzero has provided a copy of the final decision to all relevant persons referred to in Ordering Paragraph 1. We have not adopted such a requirement in prior cases where we have imposed a requirement similar to the one in Ordering Paragraph 1,⁴ and we decline to do so in this case. We note that applicants seeking Commission authorization to provide telecommunications services in California are required to submit their applications under penalty of perjury and to provide any required information after due inquiry. To the extent that an applicant is required to disclose information regarding this proceeding but fails to do so, this failure to disclose shall be relevant to the Commission's consideration of that applicant's application.

⁴ See, e.g., D.07-10-023; D.08-04-021; D.09-10-010.

5. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Sophia J. Park is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Tierzero filed an application for a registration license to operate as an NDIEC on April 19, 2016.
2. Notice of the application appeared on the Daily Calendar on April 26, 2016.
3. CPED filed a protest to Tierzero's application on May 26, 2016, alleging that Tierzero failed to disclose multiple facts required to be provided in its application relevant to its fitness to operate as an NDIEC.
4. In response to CPED's protest, Tierzero filed a request for withdrawal of its application on November 21, 2016.
5. Tierzero no longer seeks a registration license to operate as an NDIEC.
6. Tierzero has become current in its DVS surcharge payments to the Commission.

Conclusions of Law

1. Tierzero's request for withdrawal of its application should be granted.
2. The Applicant and/or any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than ten percent of applicant, or anyone acting in a management capacity for applicant, should be required to reference this application, CPED's protest to the application, and this decision, in any future applications that they, together or separately, make to the Commission, on behalf of Tierzero or any other entity, for authorization to provide telecommunications services in California.

ORDER

IT IS ORDERED that:

1. Tierzero's motion to withdraw its application is granted with the following condition: The Applicant and/or any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than ten percent of applicant, or anyone acting in a management capacity for applicant, shall reference Application 16-04-020, the Consumer Protection and Enforcement Division's protest to the application, and this decision, in any future applications that they, together or separately, make to the Commission, on behalf of Tierzero or any other entity, for authorization to provide telecommunications services in California.

2. Application 16-04-020 is closed.

This order is effective today.

Dated September 14, 2017, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners