

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

Resolution ALJ-363  
Administrative Law Judge Division

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**RESOLUTION**

RESOLUTION ALJ-363. Resolves K.19-04-009 the Appeal of TransPac Telecom, Incorporated (U7093C) from Citation CD-2018-11-063 issued by the California Public Utilities Commission, Communications Division on November 8, 2018.

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**SUMMARY**

This resolution resolves citation appeal K.19-04-009 by granting TransPac Telecom, Incorporated's (TransPac) appeal of Citation CD-2018-11-063, issued on November 8, 2018 by the California Public Utilities Commission (Commission), Communications Division (CD). This proceeding is closed.

**BACKGROUND**

On August 9, 2018, the California Public Utilities Commission (Commission), Communications Division (CD) sent an e-mail<sup>1</sup> notifying TransPac of its failure, since 2016, to report intrastate revenues and submit surcharges through CD's Telecommunications and User Fee Filing System (TUFFS). Subsequently, CD sent a second notification by letter<sup>2</sup> dated August 31, 2018. On September 14, 2018, CD sent an electronic copy of the second notification letter to TransPac by e-mail. On November 8, 2018, CD issued citation CD-2018-11-063 for TransPac's failure to report

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<sup>1</sup> CD's e-mail was titled "TransPac Telecom, Inc. (U-7093-C) Missing Revenue Subject to Surcharge Reporting on the TUFFS System."

<sup>2</sup> CD's letter was titled "Second Notice to Wireline and/or Wireless Carriers, to avoid financial penalty."

intrastate revenue and submit Public Purpose Program surcharges. Subsequently, CD staff contacted TransPac by telephone, on December 12, 2018, after the citation letter was returned to the Commission as undeliverable. TransPac reported intrastate revenue and remitted Public Purpose Program surcharges due to CD's TUFFS within a week of speaking with CD staff by telephone.

On April 12, 2019, TransPac filed an appeal from citation CD-2018-11-063. The assigned Administrative Law Judge issued a ruling setting the hearing on April 24, 2019. A hearing was held on May 9, 2019.

## **DISCUSSION**

The Commission regulates telecommunications carriers pursuant to broad regulatory authority set forth in Article XII of the California Constitution and Public Utilities (Pub. Util.) Code §§ 701, 702, 2101 and 2107, among others. CD is authorized to issue citations to telecommunication carriers pursuant to Resolution T-17601. A carrier issued a citation may accept the fine imposed by CD or contest it through a process of appeal under Resolution ALJ-299.<sup>3</sup>

At the hearing, held on May 9, 2019, it was determined that TransPac never received the e-mails or letters sent by CD notifying TransPac of its failure to report intrastate revenue and pay Public Purpose Program surcharges, as the notices were all sent to incorrect or outdated addresses. While the Commission does not disregard TransPac's obligation to update their contact information, it was determined that TransPac was first notified of CD's intent to issue a citation only after CD staff telephoned TransPac on December 12, 2018. TransPac promptly reported its intrastate revenue and remitted past-due Public Purpose Program Surcharges after notification by CD staff on December 12, 2018.

## **RESOLUTION OF THE APPEAL**

General Order (GO) 153 requires telecommunications carriers to report and remit their surcharge revenues based on intrastate end-user billings.<sup>4</sup> The Commission imposes interest on the outstanding amount due for failure to timely report and remit the required surcharges results.<sup>5</sup> CD staff shall issue two notices to carriers who are not in compliance with these regulatory obligations.<sup>6</sup>

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<sup>3</sup> The Commission issued Resolution ALJ-299 on June 26, 2014; effective January 1, 2015.

<sup>4</sup> See GO 153 § 11.3.

<sup>5</sup> See GO 153 § 11.4.

<sup>6</sup> See GO 153 § 11.5.

The Commission declines to uphold citation CD-2018-11-063 because TransPac promptly reported intrastate revenue and payed past due Public Purpose Program Surcharges on TUFFS upon notice by CD staff on December 12, 2018. It is undisputed that TransPac did not receive the first two notices of their noncompliance. When Transpac did receive notice, it complied with CD's demands within a week. Therefore, based on these facts, we find that the circumstances do not warrant the \$1,000 fine.

TransPac's appeal of citation CD-2018-11-063 is granted and the citation is dismissed. This proceeding is closed.

### **SAFETY**

The Commission has broad authority to regulate public utilities, particularly with regard to safety concerns. Although failure to report intrastate revenue and remit Public Purpose Program surcharges does not pose any direct safety concerns, integrity in the reporting and remission of surcharges furthers safety through regulatory compliance.

### **COMMENTS**

Pub. Util. Code § 311(g)(1) and Article 14 of the Commission's Rules of Practice and Procedure (Rule) require that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. Any person may file comments on the draft resolution pursuant to Rule 14.5 within 20 days. A draft of today's resolution was distributed on July 2, 2019, for comment by the interested parties. On July 22, 2019, CD served comments on the draft resolution. CD reiterated arguments made during the citation appeal hearing. No changes were made to the resolution in response to comments.

### **FINDINGS OF FACT**

1. On August 9, 2018, CD sent a first notice of TransPac's failure to report intrastate revenue and remit Public Purpose Program Surcharges by email.
2. On August 31, 2018, CD sent a second notice of TransPac's failure to report intrastate revenue and remit Public Purpose Program Surcharges by letter.
3. On September 14, 2018, CD sent the second notice of TransPac's failure to report intrastate revenue and remit Public Purpose Program Surcharges by email.
4. On November 8, 2019, CD issued citation CD-2018-11-063 for TransPac's failure to report intrastate revenue and remit Public Purpose Surcharges.

5. CD's letter issuing CD-2018-11-063 was returned to CD as undeliverable.
6. On December 12, 2018, CD staff contacted TransPac to inform them of their failure to report intrastate revenue and remit Public Purpose Surcharges.
7. On December 12, 2018, TransPac informed CD staff they had not received the first or second notices of TransPac's failure to report intrastate revenue or remit Public Purpose Program surcharges, either by letter or email.
8. TransPac promptly reported its intrastate surcharge revenue and remitted past-due Public Purpose Program surcharges upon notice by CD staff on December 12, 2018.

### CONCLUSIONS OF LAW

1. Section 11.3 of GO 153 requires telecommunications carriers to report intrastate revenue and remit Public Purpose Program surcharges to the Commission.
2. Section 11.4 of GO 153 requires CD to notify carriers twice for failure to timely remit the required Public Purpose Program surcharges to the Commission.
3. Resolution T-17601 authorized CD to issue a citation for failure to report intrastate revenue and remit Public Purpose Program surcharges, and sets the penalty amounts for specified violations.
4. TransPac did not receive CD's first and second notices regarding TransPac's failure to report intrastate revenue and remit Public Purpose Program surcharges because those notices were sent to the incorrect email and mailing addresses, which CD sent pursuant to the requirements of Section 11.4 of GO 153.
5. Upon notice by CD, TransPac promptly reported its intrastate revenue and remitted Public Purpose Program Surcharges due.

### THEREFORE, IT IS ORDERED that:

1. TransPac Telecom, Incorporated's appeal of Citation CD-2018-11-063, issued by the Communications Division on November 8, 2019, is granted.
2. Citation CD-2018-11-063 issued to TransPac Telecom, Incorporated is dismissed, and TransPac is not required to pay the \$1,000 fine.

3. This proceeding is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, the following Commissioners voting favorably thereon:

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ALICE STEBBINS  
Executive Director