

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Consumer Protection and Enforcement Division
Utility Enforcement Branch**

**RESOLUTION UEB-009
August 19, 2021**

RESOLUTION

RESOLUTION UEB-009. This Resolution Approves a Settlement Agreement among the Consumer Protection and Enforcement Division (CPED), Appia Communications, Inc., and CallTower, Inc. (U-5684-C and U 1433 C) in resolution of a surcharge payment investigation.

SUMMARY

In this Resolution, the California Public Utilities Commission (Commission) approves a Settlement Agreement among the Consumer Protection and Enforcement Division (CPED), CallTower, Inc. (CallTower), and Appia Communications, Inc. (Appia) (Attachment A), whereby CallTower has agreed to pay \$258,687 to the Commission for all outstanding surcharges of (\$168,920) plus an interest charge of \$68,767, a penalty of \$1,000 for failing to remit surcharges as a VoIP provider pursuant to Resolution T-17558, and a penalty of \$20,000 for operating without registration as a VoIP provider after its registration was archived by T-17558. CallTower has further agreed to credit a **total** of \$839 to Appia's customers for user fees previously collected from Appia's customers.

BACKGROUND

Appia began providing voice over Internet protocol ("VoIP") services in California in 2003 and was assigned utility number (U 1111 C) in February 2010. It received a Certificate of Public Convenience and Necessity ("CPCN") in November of 2010 and was assigned utility number (U 7206 C), but it did not provide telecommunications services at any time thereafter.

On October 9, 2011, the California Legislature enacted Public Utilities Code (Pub. Util. Code) Section 285 that required VoIP providers to begin collecting and remitting surcharges. Appia began collecting surcharges and user fees from its customers on or about October 2011 and continued through October 2020. However, due to alleged administrative errors, Appia failed to remit the surcharges and user fees to the Commission.

Appia's CPCN was revoked in 2012 by Resolution T-17359 for failure to remit surcharges and the annual user fees. Appia continued operating as a VoIP provider and collect surcharges from customers, but Appia failed to remit these surcharges to the Commission. Appia also continued collecting user fees from customers, even though VoIP providers were not required to pay user fees to the Commission during this time.

In 2017, Appia's VoIP registration was archived¹ by Resolution T-17558. Resolution T-17558 imposed a fine of \$1,000 on Appia and required Appia to pay all surcharges owed, plus interest, to the Commission. Appia did not pay this fine or remit such surcharges to the Commission, and Appia continued to provide VoIP services.

In early 2017, CallTower engaged in due diligence for a possible purchase of Appia as a subsidiary company and, during that process, discovered that Appia had not remitted surcharges as required by Pub. Util. Code Section 285. CallTower acquired Appia as a subsidiary company on April 2, 2018, and during the acquisition process, CallTower agreed with Appia that it would resolve Appia's compliance issues. CallTower contacted the Commission on or about April 29, 2020, initially through a consultant, and later directly, inquiring how it could resolve Appia's non-payment of surcharges. According to CallTower, Appia stopped operating as VoIP provider on November 1, 2020. At that point, CallTower took over Appia's VoIP operations, including collecting and remitting surcharges.

On September 18, 2020, CPED issued a Request for Production, Set No. 1 ("Request No. 1"). CallTower provided responses to Request No. 1 on November 17, 2020. On December 30, 2020, CPED issued an email request for supplemental information on one request, and CallTower responded on January 8, 2021.

Beginning in February 2021, CPED, Appia, and CallTower engaged in settlement negotiations, wherein CallTower acknowledged Appia's compliance failure and agreed to pay all outstanding surcharges with interest and to pay a penalty.

On May 19, 2021, CPED, Appia, and CallTower finalized the attached settlement agreement, (Settlement) which resolves all issues in the underlying investigation. CallTower, Appia, and CPED request that the Commission adopt the settlement by approving this resolution.

¹ When Appia's VoIP registration was archived, it could no longer access the Commission's Telecommunications and User Fee Filing System (TUFFS) to report revenues and remit surcharges to the Commission.

CPED STAFF INVESTIGATION FINDINGS

CPED's investigation found that Appia violated Pub. Util. Code Section 285 by failing to remit surcharges to the Commission from October 2011 – October 2020. CPED also found that Appia collected user fees from customers from June 2012 – October 2020, but VoIP providers were not required to pay user fees to the Commission during this time. CPED also found that Appia has not paid the penalties, surcharges, and interest imposed by Resolution T-17558.

DISCUSSION

CallTower, Appia, and CPED engaged in settlement negotiations to resolve the issues identified in CPED's investigation. Pursuant to these negotiations, CallTower has agreed to pay \$258,687 to the Commission for all outstanding surcharges of (\$168,920) plus an interest charge of \$68,767, a penalty of \$1,000 for failing to remit surcharges as a VoIP provider pursuant to Resolution T-17558, and a penalty of \$20,000 for operating without registration as a VoIP provider after its registration was archived by T-17558. CallTower has further agreed to credit a total of \$839 to Appia's customers for user fees previously collected from Appia's customers.

Given CallTower's willingness to address and resolve all of the non-compliances herein, CPED believes that Appia's payment to the Commission of outstanding surcharges of \$168,920 plus an interest charge of \$68,767 on surcharges owed is in the public interest. This is especially true here, where CallTower has agreed to pay, as part of the settlement agreement, additional penalties of \$20,000 for operating as a VoIP provider without registration.

In light of the foregoing factors, CallTower, Appia, and CPED have agreed that it is in the public interest to enter into a settlement agreement to fully resolve this investigation. With this payment, CPED states that all of its identified issues are appropriately resolved, and that the settlement is reasonable in light of the circumstances of the whole matter, consistent with the law, and in the public interest.

CONCLUSIONS AND RECOMMENDATIONS

In light of the above discussions, the attached settlement among CPED, Appia, and CallTower should be approved.

SAFETY CONSIDERATIONS

CPED staff has identified no safety concerns with the settlement among Appia, CallTower, and CPED, which involves failure to remit surcharges and failure to comply with Resolution T-17558.

COMMENTS

In accordance with the Pub. Util. Code Section 311(g)(1), the draft Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Comments were received _____. Reply comments were received _____.

Therefore, CPED recommends adoption of the proposed Resolution without further modifications or delay.

FINDINGS AND CONCLUSIONS

1. Pub. Util. Code) Section 285 requires VoIP providers to pay surcharges into the Commission's public purpose programs.
2. In 2017, Appia's VoIP registration was archived by Resolution T-17558.
3. Resolution T-17558 imposed a fine of \$1,000 on Appia and required Appia to pay all surcharges owed, plus interest, to the Commission. CallTower, which acquired Appia on April 2, 2018, notified the Commission that Appia had failed to remit surcharges while providing VoIP service in California.
4. CallTower has paid the outstanding surcharges.
5. CPED's investigation found that Appia violated Pub. Util. Code Section 285 by failing to remit surcharges to the Commission from October 2011 – October 2020. CPED also found that Appia collected user fees from customers from June 2012 – October 2020, but VoIP providers were not required to pay user fees to the Commission during this time. CPED also found that Appia has not paid the penalties, surcharges, and interest imposed by Resolution T-17558.
6. CallTower, Appia, and CPED have engaged in settlement negotiations and have agreed that the attached Settlement resolves all issues identified in UEB Staff's investigation.
7. CallTower's payment of \$258,687 to the Commission for all outstanding surcharges of \$168,920, plus an interest penalty of \$68,767, a penalty of \$1,000 for failing to remit surcharges as a VoIP provider pursuant to Resolution T-17558, and a penalty of \$20,000 for operating without registration as a VoIP provider after its registration was archived by T-17558, plus CallTower's credit of \$839 to Appia's customers for user fees previously collected from Appia's customers, appropriately resolves all findings in CPED's investigation, is reasonable in light of the circumstances of this matter, is consistent with the law, and is in the public interest.
8. CPED identified no safety concerns regarding the settlement among CallTower, Appia, and CPED, as it involves matters of surcharge payments and VoIP registration.

THEREFORE, IT IS ORDERED that:

1. The Settlement Agreement among CallTower, Appia, CPED is adopted.
2. CallTower shall make a payment of \$258,687.00 to the Commission within 30 days from the effective date of this Resolution.
3. CallTower will credit to Appia's customers a total of \$839 in user fees previously collected from Appia's customers through October 31, 2020.

This Resolution is effective today.

I hereby certify that the California Public Utilities Commission adopted this Resolution at its regular meeting on August 19, 2021, and the following Commissioners approved favorably thereon:

Rachel Peterson
Executive Director

ATTACHMENT A

SETTLEMENT AGREEMENT AMONG
THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION,
APPIA COMMUNICATIONS, INC.,
AND CALLTOWER, INC.

**SETTLEMENT AGREEMENT AMONG
THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION,
APPIA COMMUNICATIONS, INC.,
AND CALLTOWER, INC. (U 7363 C AND U 1433 C)**

Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Commission’s Consumer Protection and Enforcement Division (“CPED”), Appia Communications, Inc (“Appia”), and CallTower, Inc. (“CallTower”) (U 7363 C and U 1433 C), each referred to individually as a “Party” and together as “the Settling Parties,” have agreed on the terms of this Settlement Agreement (“Agreement”), which they now submit for consideration and approval by the Commission via a resolution. The Settling Parties acknowledge and agree that the alleged violations giving rise to this Agreement relate solely to Appia Communications’ (“Appia”) operations in California, but CallTower is also entering into this Agreement because Appia became a subsidiary of CallTower as of 2018.

I. GENERAL PROVISIONS

A. This Settlement Agreement is intended to be a full and final resolution of all issues related to CPED’s investigation into Appia’s alleged violation of California Public Utilities Code Section 285 and Resolution T-17558 for collecting surcharges from customers but failing to remit them to the Commission and for operating as a voice over Internet protocol (“VoIP”) provider without VoIP registration up and until October 2020.

B. The Settling Parties have agreed upon the resolution of each issue 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. Furthermore, consistent with Rule 12.5 of the Commission’s Rules of Practice and Procedure, the Settling Parties intend that the approval of this Settlement Agreement by the Commission should not be construed as a precedent or statement of policy of any kind for or against either Party in any current or future proceeding with respect to any issue addressed in the Settlement Agreement.

C. This Settlement Agreement is the result of a process of direct negotiation between

the Settling Parties. The Settling Parties agree that this Settlement Agreement is an integrated agreement, so that if the Commission rejects or modifies any portion of this Settlement Agreement or modifies the obligations placed upon CallTower from those that the Settlement Agreement would impose, each Party shall have the right to withdraw. Furthermore, the Settlement Agreement is being presented as an integrated package such that Settling Parties are agreeing to the Settlement Agreement as a whole rather than agreeing to specific elements of the Settlement Agreement.

D. 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.

E. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument.

F. This Settlement Agreement constitutes the entire agreement between the Settling Parties and supersedes all prior or contemporaneous agreements, negotiations, representations, warranties, and understandings of the Settling Parties with respect to the subject matter set forth herein or otherwise relevant to this proceeding.

II. JOINT FACTUAL STATEMENTS

Appia Communications began providing VoIP services in California in 2003 and was assigned utility number (U 1111 C) in February 2010. It received a Certificate of Public Convenience and Necessity (“CPCN”) in November of 2010 and was assigned utility number (U 7206 C), but it did not provide telecommunications services at any time thereafter.

On October 9, 2011, the California Legislature enacted a statute that required VoIP providers to begin collecting and remitting surcharges.¹ Appia began collecting surcharges and user fees from its customers on or about October 2011 and continued through October 2020. However, due to alleged administrative errors, Appia failed to remit the surcharges to the

¹ The statute was codified as Cal. Pub. Util. § 285.

Commission.

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In 2017, Appia's VoIP registration was archived² by Resolution T-17558. Resolution T-17558 imposed a fine of \$1,000 on Appia and required Appia to pay all surcharges owed, plus interest, to the Commission. Appia did not pay this fine or remit such surcharges to the Commission, and Appia continued to provide VoIP services.

In early 2017, CallTower engaged in due diligence for a possible purchase of Appia as a subsidiary company and during that process, discovered that Appia had not remitted surcharges as required by Public Utilities Code Section 285. CallTower acquired Appia as a subsidiary company on April 2, 2018, and during the acquisition process, CallTower agreed with Appia that it would resolve Appia's compliance issues. CallTower contacted the Commission on or about April 29, 2020, initially through a consultant, and later directly, inquiring how it could resolve Appia's non-payment of surcharges.

According to CallTower, Appia stopped operating as VoIP provider on November 1, 2020. At that point, CallTower took over Appia's VoIP operations, including collecting and remitting surcharges.

On September 18, 2020, the Commission's Consumer Protection and Enforcement Division ("CPED") issued a Request for Production, Set No. 1 ("Request No. 1"). CallTower provided responses to Request No. 1 on November 17, 2020. On December 30, 2020, CPED issued an email request for supplemental information on one request and CallTower responded on January 8, 2021. Thereafter, CallTower and CPED held discussions about a possible settlement of Appia's compliance issues, which resulted in the instant Settlement Agreement.

² When Appia's VoIP registration was archived, it could no longer access the Commission's Telecommunications and User Fee Filing System (TUFFS) to report revenues and remit surcharges to the Commission.

III. AGREEMENT

1. CallTower agrees to pay a total of \$259,526 as full satisfaction of Appia's compliance issues. This amount includes a payment of \$258,687 to the Commission and a credit of \$839 to Appia's customers.

2. The payment of \$258,687 to the Commission includes the following:

- a. Unpaid surcharges of \$168,920 plus 10 percent simple interest³ of \$68,767 for a total of \$ 237,687 for surcharges collected through October 31, 2020.
- b. A penalty of \$1,000 for failing to remit surcharges as a VoIP provider pursuant to Resolution T-17558.
- c. A penalty of \$20,000 for operating without registration as a VoIP provider after its registration was archived by T-17558.

3. The following will be credited to Appia's customers:

- a. A total of \$839 in user fees collected from Appia's customers through October 31, 2020.

4. Appia will not provide VoIP services beyond the date of settlement, unless and until it obtains authority from the Commission to operate in California.

5. Going forward, CallTower and Appia must comply with all laws, regulations, and other requirements applicable to VoIP providers, including the requirement to remit surcharges to the Commission under California Public Utilities Code Section 285.

6. Going forward, CallTower and Appia must not collect user fees from customers above what is required or authorized by law, regulation, or by the Commission or another government entity.

7. Settling Parties agree to support and actively defend the Settlement Agreement if its adoption is opposed. In the event the Commission rejects or modifies the Settlement Agreement, Settling Parties reserve all rights set forth in Rule 12.4 of the Rules of Practice and Procedure.

³ General Order 153, Section 11.4.


IV. CONCLUSION

The parties mutually believe that, based on the terms and conditions stated above, this Settlement Agreement is reasonable, is consistent with the law and is in the public interest.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the date set forth below.

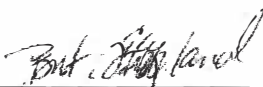
Dated: May 14, 2021

APPIA COMMUNICATIONS, INC.

By: 
Bret England
President and Chief Executive Officer

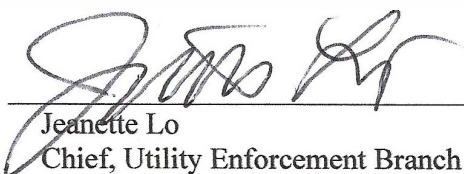
Dated: May 14, 2021

CALLTOWER, INC.

By: 
Bret England
President and Chief Executive Officer

Dated: May 19, 2021

CONSUMER PROTECTION &
ENFORCEMENT DIVISION, CPUC

By: 
Jeanette Lo
Chief, Utility Enforcement Branch