

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.

Appia's CPCN was revoked in 2012 by Resolution T-17359 for failure to remit surcharges and the annual user fees.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 collected surcharges from customers, but Appia failed to remit these surcharges to the Commission. Appia also collected user fees from customers from June 2012 through October 2020, even though VoIP providers were not required to pay user fees to the Commission during this time.

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

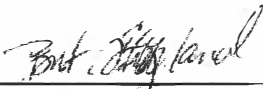
APPIA COMMUNICATIONS, INC.

By: 

Bret England
President and Chief Executive Officer

Dated: May 14, 2021

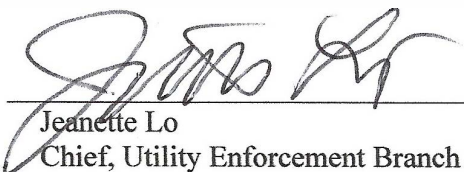
CALLTOWER, INC.

By: 

Bret England
President and Chief Executive Officer

Dated: May 19, 2021

CONSUMER PROTECTION &
ENFORCEMENT DIVISION, CPUC

By: 

Jeanette Lo
Chief, Utility Enforcement Branch