

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Enforcement Division
Utility Enforcement Branch

Date: August 25, 2022
Res. UEB-010

RESOLUTION

RESOLUTION UEB-010. This Resolution Approves a Settlement Agreement between the Consumer Protection and Enforcement Division (CPED) and Southern California Telephone Company (U-7055-C) in resolution of a surcharge payment investigation.

SUMMARY

In this Resolution, the California Public Utilities Commission (Commission) approves a Settlement Agreement (attached hereto as Attachment A) by and between the Consumer Protection and Enforcement Division (CPED) and Southern California Telephone Company (SCTC), whereby SCTC has agreed to pay \$457,363.31 to the Commission for all outstanding surcharges, interests and penalties arising from SCTC's under collection and under remittance of surcharges and user fees for fiscal years 2012-2015 as a provider of competitive local exchange services pursuant to Decision (D.) 07-12-028. The settling parties agree that this settlement represents a complete resolution of all amounts owed by SCTC for the time period investigated herein.

BACKGROUND

SCTC is a Delaware corporation authorized by D.07-12-028 to operate in California under U-7055-C.¹ SCTC, under this authority, provides limited facilities-based and resold competitive local exchange telephonic services throughout the service territories of AT&T, Verizon California, SureWest Telephone, and Citizens Telecommunications Company of California. SCTC also provides resold facilities-based interexchange services statewide. SCTC began doing business in California on January 1, 2009.

Public Utilities Code section 401 provides for funding the Commission by means of a reasonable fee imposed upon each common carrier and business related thereto. Public Utilities Code section 432(c)(3) further authorizes the Commission to require telecommunications carriers to collect from ratepayers certain surcharges and fees, and remit the same to the Commission. The Commission has since established rules

¹ SCTC's principal place of business is 27515 Enterprise Circle West Temecula, CA 92590.

providing that State universal service contributions are to be collected from “all end users” of telephone services, including wireless services.²

SCTC acknowledges that some amount of fees are owed, but maintains that its under collection and under remittance was due to a billing glitch within SCTC’s billing system, such that it never billed or collected the monies in question.

Staff Investigation and Audit Findings

Based on a referral from the Commission’s Communications Division (CD), CPED’s Utility Enforcement Branch (UEB) staff investigated SCTC for failing to collect and remit surcharges and user fees required by Pub. Util. Code § 401(a) (Collection and Disposition of Fees). The purpose of the investigation was to determine and seek remittance of the outstanding balance owed by SCTC. SCTC’s under collection and under remittance of surcharges and user fees to the Commission was discovered through an audit completed in August 2016 by Crowe Horwath, LLP³ (Crowe), an audit contractor, and by a subsequent audit conducted by the Utility Audits Branch (UAB) under the direction of CD. According to SCTC, its non-collection was due to a billing glitch in the SCTC billing system and was not intentional. The glitch was rectified and SCTC has been fully compliant with applicable legal requirements since the discovery of the glitch. SCTC remains in good standing with the CPUC.

In 2014, CD and UAB agreed to audit SCTC and to outsource this audit to Crowe. Specifically, CD and UAB tasked Crowe with auditing SCTC’s records to determine if they were properly collecting and remitting to the Commission certain mandatory surcharges and user fees for fiscal year 2012-13. CD and UAB also authorized Crowe to extend the audit to include fiscal years 2013-14 and 2014-15 if it found significant violations for SCTC for the fiscal year 2012-13.

Crowe completed its audit for fiscal year 2012-13 and issued a final examination report on April 30, 2016. Crowe found significant violations by SCTC due to its under collection and under remittance of mandatory surcharges and user fees for the fiscal year 2012-13. CD subsequently issued a demand letter to SCTC for the total amount of surcharges, user fees and interest in arrears for fiscal year 2012-13 in the amount of \$217,314.59.⁴

² See, e.g., D.94-09-065 and D.96-10-066.

³ Crowe Horwath, LLP is a public accounting firm contracted by CD to perform audits on occasion.

⁴ CD letter to SCTC dated November 22, 2016 – California Telecommunications Public Purpose Program (PPP) Surcharge and User Fee Compliance Examination of Southern California Telephone Company (U-7055-C) dated April 30, 2016, for the period of July 1, 2012, through June 30, 2013.

Based on these initial findings and prior authorization from CD, Crowe extended the audit's scope for SCTC's records. During Crowe's extended audit, it found that SCTC had under billed, under collected and under remitted surcharges and user fees for fiscal year 2013-2014 and fiscal year 2014-2015, although what was billed and collected was paid. Crowe concluded SCTC owed the Commission \$246,364.00 and for fiscal year 2013-2014 and that it owed \$304,958.00 for fiscal year 2014-2015. CD afterwards issued a second demand letter for these amounts.⁵ By April 2018, CD had concluded the total in under-remitted amounts SCTC owed to the Commission for fiscal years 2012-2015 was \$849,244.07, including interest.⁶ However after further review by the Utility Audit, Finance, and Compliance Branch of the CPUC (AFCB), it was determined that Crowe overcharged SCTC \$202,979.19 in non-intrastate components.⁷

Staff Enforcement Efforts

After SCTC failed to pay any of the amounts owed or to indicate when or if it would make payment, this matter was referred to CPED's UEB for enforcement. UEB with the assistance of the Commission's Legal Division commenced negotiations with SCTC to secure their payment of the amount of \$849,244.07 allegedly owed.

SCTC contested the Crowe audit reports on November 29, 2018, in a letter to the CPUC from the company's president, Kevin Reno. As explained its letter, due to limited resources, SCTC was "unable to definitively agree or disagree with the report's findings." However, SCTC continued to work with AFCB to locate and correct errors in the Crowe audit. SCTC acknowledged that there was a deficiency in its remittances due to a glitch in its billing system that resulted in SCTC's failure to bill and collect the amounts that the audit found are owed."⁸

UAB conducted a review of the Crowe audits to confirm the correct amounts owed by SCTC. After UAB completed its review of Crowe's findings, CD sent an updated demand letter to SCTC on August 15, 2019, which reduced the amount it owed the

⁵ CD letter to SCTC dated April 5, 2018 – California Telecommunications Public Purpose Program (PPP) Surcharge and User Fee Compliance Examination of Southern California Telephone Company (U-7055-C), dated November 17, 2017, for the periods of July 1, 2013, through June 30, 2014, and July 1, 2014, through June 30, 2015.

⁶ The audits initially found a total of \$849,244.07 in underpayments for the period July 1, 2012, through June 30, 2015. But as discussed further below, CD recalculated the underpaid amounts and arrived at \$605,038.85. *See*, Staff Report at 3.

⁷ See May 17, 2019 letter from Tracy Fok to Kevin Reno explaining overcharges AFCB found

⁸ SCTC data response letter to CD dated November 29, 2018.

Commission from \$849,244.07 to \$605,038.85, of which \$461,749.48 was the principal amount for under collected surcharges and user fees and \$143,289.37 was interest.²

CD referred SCTC's deficiency to CPED's UEB in early 2020. UEB staff consequently investigated SCTC for its nonpayment of \$605,038.85. After UEB staff reviewed the Commission's archived database for user fee payments, staff confirmed that SCTC in fact made some annual remittances of user fees going back to 2008. These payments, however, were not for the full amount owed. Staff therefore deducted those annual user fee remittances (\$4,386.16) it found for the fiscal years 2012-15 remittances and reduced the principal amount due from \$461,749.48 to \$457,363.31 in outstanding surcharges and user fees, plus \$142,192.83 in interest. Thus, the total amount owed by SCTC to date is \$599,556.14.

UEB staff with the Commission's Legal Division's assistance contacted SCTC in April 2021 to negotiate a mutually acceptable settlement of the amount owed. After several months of negotiation from April to December 2021, SCTC and UEB agreed on the terms of the Settlement Agreement attached as Attachment A hereto. SCTC worked closely and cooperated with Crowe and CD during and after the audits. SCTC complied with every request. CD worked with SCTC to determine the correct amount owed. SCTC was transparent throughout the audits and provided financial information confirming the Company's ability to pay throughout the entire process.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution was served by email to interested parties on July 22, 2022, in accordance with Cal. Pub. Util. Code § 311(g). Comments were received:

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CONCLUSIONS AND RECOMMENDATIONS

In light of the foregoing factors, SCTC and CPED have agreed that it is in the public interest to enter into the Settlement Agreement to fully resolve this investigation. By entering this Settlement Agreement on behalf of the Commission, CPED states that all of the identified issues are appropriately resolved, and that the settlement detailed in the Settlement Agreement is reasonable in light of the circumstances of the whole matter, consistent with the law, and in the public interest.

² CD letter to SCTC dated August 15, 2019 – California Telecommunications Public Purpose Program (PPP) Surcharge and User Fee Compliance Examination of Southern California Telephone Company (U-7055-C), for the period of July 1, 2012, through June 30, 2015, adjusted due to an intrastate revenue reporting policy change and corresponding changes to intrastate revenue.

In light of the above facts and chronology, the Settlement Agreement attached hereto as Attachment A by and between CPED and SCTC should be approved.

SAFETY CONSIDERATIONS

CPED has identified no safety concerns with the proposed Settlement Agreement by and between CPED and SCTC.

FINDINGS AND CONCLUSIONS

1. Pub. Util. Code section 401 provides for funding the Commission by means of a reasonable fee imposed upon each common carrier and business related thereto.
2. Pub. Util. Code section 432(c)(3) further authorizes the Commission to require telecommunications carriers to collect from ratepayers certain surcharges and fees, and remit the same to the Commission.
3. The Commission has since established rules providing that State universal service contributions are to be collected from “all end users” of telephone services, including wireless services.¹⁰
4. CD and UAB agreed to audit SCTC and various other telecommunications carriers and outsourced these audits to Crowe.
5. Crowe was tasked with auditing SCTC’s records to determine if it was properly collecting and remitting to the Commission certain mandatory surcharges and user fees for fiscal year 2012-13. If Crowe found significant violations for any such carrier for the fiscal year 2012-13, CD and UAB tasked Crowe to extend the audit to include fiscal years 2013-14 and 2014-15.
6. Audits conducted by Crowe for fiscal years 2012-2015 showed that SCTC under collected and under remitted to the Commission required surcharges, user fees, and interest. Crowe concluded the total amount in arrears for these required surcharges, user fees, and interest for fiscal years 2012-2015 was \$849,244.07.
7. UAB’s and UEB’s subsequent reviews and corrections of the Crowe audits and Commission records determine the amount for surcharges, user fees and interest outstanding and owed by SCTC as \$599,556.14 in arrears and due to the Commission.
8. CD sent demand letters in November 2016, April 2018, and August 2019 to SCTC, each letter demanding SCTC pay the Commission the amounts for uncollected and

¹⁰ See, e.g., D.94-09-065 and D.96-10-066.

unremitted surcharges, fees and interest mandated by Pub. Util. Code section 432(c)(3).

9. SCTC acknowledges and agrees that it owes the Commission for under collected and under remitted surcharges; however, is unable to confirm the actual user fees and interest in the amount of \$599,556.14.
10. SCTC and CPED have reached an agreement (as explained in greater detail in the Settlement Agreement attached hereto as Attachment A) whereby SCTC agrees to pay the Commission the principal amount of \$457,363.31 to fully discharge the debt it owes for unpaid surcharges and user fees for fiscal years 2012-2015. The Commission agrees to waive \$142,192.83 in interest due and outstanding as consideration of SCTC paying the principal amount of \$457,363.31 in accordance with the terms of Attachment A.
11. Attachment A further provides that SCTC will pay \$150,000 into an account designated by CPED within 45 days of the execution of the Settlement Agreement, and the remaining \$307,363.31 will be paid to the Commission within a seven-year period commencing on the first day of the calendar month following the Commission's adoption of these resolutions with equal monthly payments until the balance is paid in full.
12. CPED has identified no safety concerns with the proposed Settlement Agreement by and between CPED and SCTC.
13. The Commission has received no public comments on the proposed Settlement Agreement between CPED and SCTC.

THEREFORE, IT IS ORDERED that:

1. The Settlement Agreement attached hereto as Attachment A between CPED and SCTC is adopted.
2. SCTC will pay \$150,000 into an account designated by CPED within 45 days of the execution of the Settlement Agreement, and the remaining \$307,363.31 will be paid to the Commission in accordance with the terms of the Settlement Agreement.
3. This resolution is effective today.

I hereby certify that the California Public Utilities Commission adopted this Resolution at its regular meeting on August 25, 2022, and the following Commissioners approved favorably thereon:

RACHEL PETERSON
Executive Director

ATTACHMENT A

SETTLEMENT AGREEMENT

**SETTLEMENT AGREEMENT BY AND BETWEEN THE CONSUMER
PROTECTION AND ENFORCEMENT DIVISION AND SOUTHERN
CALIFORNIA TELEPHONE COMPANY (U-7055-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”) and Southern California Telephone Company (“SCTC”) (U-7055 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.

I. GENERAL PROVISIONS

A. This Settlement Agreement is intended to be a full and final resolution of all issues related to CPED’s investigation of SCTC’s under collection and under remittance to the Commission of surcharges and user fees required under Pub. Util. Code §§ 401(a), 405 and 2890(d)(2)(A), as further described below, for the fiscal years 2012 through 2015.

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 SCTC 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. Both 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

1. SCTC provides limited facilities-based and resold competitive local exchange services to customers in California. It provides these services throughout the service territories of AT&T, Verizon California, SureWest Telephone, and Citizens Telecommunications Company of California. SCTC also provides resold facilities-based interexchange services statewide. SCTC has been authorized to provide these services to Californians since 2007. SCTC began doing business in California on January 1, 2009, and its principal place of business is 27515 Enterprise Circle, West Temecula, CA 92590.

2. Based on a referral from the Commission's Communications Division (CD), CPED's Utility Enforcement Branch (UEB) staff investigated SCTC for failing to collect and remit surcharges and user fees required by Pub. Util. Code § 401(a) (Collection and Disposition of Fees). The purpose of the investigation was to determine and seek remittance of the outstanding balance owed by SCTC.

3. SCTC's under collection and under remittance of surcharges and user fees to the Commission was caused by a malfunction in the SCTC computer software and was discovered through an audit completed in August 2016 by Crowe Horwath, LLP (Crowe), an outside audit contractor engaged by the Commission, and by a subsequent audit conducted by the Commission's Utility Audits Branch (UAB) under the direction of CD. SCTC has been fully compliant since correcting the software malfunction.

4. On April 30, 2015, Crowe conducted two audits and found that SCTC had failed to collect and remit surcharges and user fees for fiscal year 2013-2014 and fiscal year 2014-2015. After multiple audits, revisions and corrections, the UEB staff further investigated and ultimately concluded that the total principal amount due from SCTC is \$457,363.31 in outstanding surcharges and user fees, plus \$142,192.83 in interest.

5. Upon CD's request, Utility Audit Branch (UAB) conducted a review of the Crowe audits to confirm the correct amounts owed by SCTC. In 2019, after UAB completed its review of Crowe's findings, CD sent an updated demand letter to SCTC on August 15, 2019, which corrected the inaccurate amount SCTC owed the Commission from \$849,244.07 to \$605,038.85, of which \$461,749.48 was the principal amount for uncollected surcharges and user fees and \$143,289.37 in interest. SCTC maintains that due to the unclear amounts owed due to the overbilling to SCTC, SCTC did not remit payments for this debt. According to SCTC, it was unable to understand the amounts due and it is unable to pay hundreds of thousands of dollars that the Company never collected because doing so would place a severe financial hardship on the Company.

6. According to SCTC, since the billing glitch was discovered, it has been collecting proper fees and surcharges from its customers and has been compliant in remitting them to the CPUC.

7. CD referred SCTC's deficiency to the CPED's UEB in early 2020 for further follow-up and investigation. UEB staff consequently investigated and discovered for the fiscal years 2012-15, remittances by SCTC that reduced the principal amount due to \$457,363.31 in outstanding surcharges and user fees, plus \$142,192.83 in interest.

8. SCTC has acknowledged and agreed the total amount owed by SCTC pursuant to UEB's final determination in 2020 as of March 8, 2022 is \$599,556.14 (hereinafter, the "Debt Balance").

9. After negotiations lasting from April 2021 through March 2022, SCTC and CPED agreed to settle the Debt Balance as described in Section III below.

III. AGREEMENT

1. SCTC and the CPED herein agree that SCTC will remit to the Commission a total Debt Balance of \$599,556.14, which includes \$457,363.31 in outstanding surcharges and user fees, plus \$142,192.83 in interest.

2. SCTC agrees to pay the Commission a total of \$457,363.31 ("Agreed Settlement Amount") as full satisfaction of SCTC's Debt Balance to the Commission, per the payment schedule detailed below in paragraph 4.

3. In consideration for SCTC's agreement and successful performance in paying the Agreed Settlement Amount, CPED agrees to waive the \$142,192.83 in interest and accept that timely payments by SCTC of the Agreed Settlement Amount per the payment schedule detailed below in paragraph 4 will constitute full satisfaction of SCTC's Debt Balance.

4. SCTC shall pay the Agreed Settlement Amount in installments as follows:

- a. SCTC shall make an initial payment in the amount of \$150,000.00 ("Initial Payment") to the Commission by wiring funds to CPUC's Fiscal Office designated account in accordance with the wiring instructions attached hereto as Appendix A no later than 45 days after the full execution of this Settlement Agreement by both parties.
- b. SCTC shall thereafter pay the remaining balance of \$307,363.31 in eighty-four (84) monthly installments of \$3,659.09 each, the first such monthly installment to be paid on the first day of the calendar month after the Commission has approved this Settlement Agreement by a resolution of the Commissioners, with payments due on the first day of each following calendar month.

- c. Any default by SCTC on the above-described installment payments constitutes a violation of this Settlement Agreement.

5. As a condition for the CPED entering this agreement, SCTC shall give the following to the CPED:

- a. Prior to CPED's execution of this Settlement Agreement, copies of SCTC's balance sheets as of the close of the latest calendar quarter and statements of income and retained earnings and statements of cash flows of SCTC for the same quarter, each certified by SCTC's Chief Financial Officer or equivalent officer;
- b. Not later thirty (30) days after the end of each of the first three-quarters of each fiscal year of SCTC during the term of this Settlement Agreement, copies of SCTC's balance sheets as of the end of the quarter and statements of income and retained earnings and statements of cash flows of SCTC for the period from the beginning of the fiscal year to the end of the quarter, each certified by SCTC's Chief Financial Officer or equivalent officer;
- c. Not later than one hundred twenty (120) days after the end of each tax year during the term of this Settlement Agreement, copies of SCTC's federal income tax return for the year, with all schedules; and,
- d. From time to time, such further information regarding the assets, liabilities, affairs, and financial condition of SCTC as the CPED may reasonably request.

6. Going forward from the date this Settlement Agreement is entered into, SCTC must comply with all laws, regulations, and other requirements applicable to providers of telephonic services, including, but not limited to, the requirement to collect and remit surcharges and user fees to the Commission under California Public Utilities Code section 432(c)(3).

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

IV. CONCLUSION

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

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

Respectfully submitted

CONSUMER PROTECTION AND
ENFORCEMENT DIVISION

JEANETTE LO

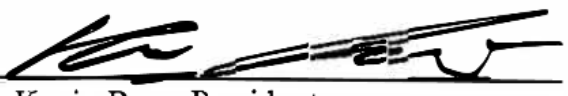
/s/ 

Jeanette Lo

CONSUMER PROTECTION
AND ENFORCEMENT DIVISION
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1998
E-mail: jeanette.lo@cpuc.ca.gov
Chief,
UTILITY ENFORCEMENT BRANCH

SOUTHERN CALIFORNIA TELEPHONE
COMPANY

KEVIN RENO

/s/ 

Kevin Reno-President

27515 Enterprise Circle West
Temecula, CA 92590-4864
Telephone: (951) 693-1880
Fax: (951) 693-1550
E-mail: kevin@socaltelephone.com

SOUTHERN CALIFORNIA TELEPHONE
COMPANY

April 21, 2022

Appendix A

INSTRUCTIONS FOR WIRE TRANSFER

Wire to:

Bank Name : Bank of America Sacramento Main
2000 Clayton Road, Bldg., D. 5th floor
Concord, CA 94520

ABA Routing : 026009593 (Wire Transfer)

For credit to : California State Treasurer
C/O NO CA GOVERNMENT BANKING 1436 555
CAPITOL MALL STE 765 SACRAMENTO CA 95814-4502

Attn: FINANCIAL SERVICES SECTION

Account: 0148280005

For further Credit to: Agency name: CPUC

Resolution# UEB-010