

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 27, 2002

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4/4/02
Agenda ID #382

TO: PARTIES OF RECORD IN APPLICATION 99-04-011

This is the proposed decision of Administrative Law Judge (ALJ) O'Donnell. It will be on the Commission's agenda at the meeting on April 4, 2002. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(d) provides that there must be a 30-day review and comment period on proposed decisions, unless there is an unforeseen emergency situation, the parties to the proceeding so stipulate, or otherwise provided by law. In this case, all parties have stipulated to reduce the comment period to three days.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ O'Donnell at jpo@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ CARL K. OSHIRO
Carl K. Oshiro, Interim Chief
Administrative Law Judge

CKO:tcg

Attachment

Decision **PROPOSED DECISION OF ALJ O'DONNELL** (Mailed 3/27/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VarTec Telecom, Inc. for a Certificate of Public Convenience and Necessity To Offer Local Exchange and Access Services and to Acquire the Majority Membership Interest in, and the Certificate of Public Convenience and Necessity of Choctaw Communications, LLC.

Application 99-04-011
(Filed April 14, 1999)

O P I N I O N

Daniel W. Douglass, and Philip L. Chabot, Jr.,
Attorneys at Law, for VarTec Telecom, Inc.,
applicant.
Cleveland W. Lee, Attorney at Law, for the
Consumer Services Division, interested party.

I. Summary

VarTec Telecom, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Public Utilities Code Section 1001 for authority to provide limited facilities-based and resold local exchange telecommunications services as a competitive local carrier (CLC).¹ In addition, it requests approval of

¹ A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

its purchase of Choctaw Communications, LLC. (Choctaw)². By this decision, we grant the requested CPCN subject to the terms and conditions set forth below. In addition, we adopt a settlement between the Commission's Consumer Services Division (CSD) and Applicant.

Pursuant to the settlement, Applicant admits that it did the following:

1. Applicant sold U.S. Republic Communications, Inc. (USRC) without prior Commission authorization.
2. USRC failed to provide USRC customers with notice of the sale of USRC.
3. Applicant purchased Choctaw without prior Commission authorization.
4. Applicant sold Choctaw to 1-800-Reconex without prior Commission authorization.

Applicant will pay a fine of \$20,000 for each of the above violations, for a total fine of \$80,000. In addition, Applicant will pay restitution of \$25 to each of 101 former long distance customers of USRC who alleged unauthorized long distance charges by USRC.

II. Background

In prior decisions, we authorized the provision of competitive local exchange service within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), Roseville Telephone Company (RTC) and Citizens Telecommunications Company of California, Inc. (CTC).

Applicant, a Texas corporation, has its principal place of business located at 1600 Viceroy Drive, Dallas, Texas 75235.

² By D. 00-01-036, the Commission approved the conversion of Choctaw Communications, LLC to Choctaw Communications, Inc. d/b/a Smoke Signal Communications.

Applicant was granted authority to resell interexchange services by Decision (D.) 94-05-053 (U-5384-C).

In this application, Applicant requests authority to provide limited facilities-based and resold local exchange services within Pacific and Verizon's service territories, as well as approval of its acquisition of a controlling interest in Choctaw. Applicant and CSD filed a joint motion on March 8, 2002 requesting approval of a settlement. We will address the settlement first, and the request for a CPCN second.

III. Facts Relating to the Proposed Settlement

On December 24, 1999, Applicant³ sold USRC⁴ to Alliance Group Services, Inc. (Alliance).⁵ On January 6, 2000, Applicant notified the Commission of the sale by letter. Applicant also asked that USRC's CPCN be cancelled. USRC subsequently filed Advice Letter No. 4 on February 3, 2000, requesting approval of the sale and requesting cancellation of its CPCN. The Advice letter was approved. Applicant's sale of USRC violated Section 851 that requires prior Commission approval of the sale. In addition, USRC failed to provide its customers with notice of the sale as required by Section 2889.3(a).

In addition to its interexchange operations, USRC sold Internet World Wide Web site hosting (web-hosting) services. On March 7, 1999, USRC stopped

³ VarTec Holding Company, a wholly owned subsidiary of Applicant, owned a controlling interest in USRC, and sold it to Alliance Group Services, Inc. It also purchased and subsequently sold a controlling interest in Choctaw.

⁴ USRC was granted authority to resell interexchange services by Decision (D.) 97-04-070 (U-5773-C).

⁵ Alliance was granted authority to resell interexchange services by D.98-08-069 (U-6047-C).

offering web-hosting services, and in July 1999, it stopped soliciting interexchange customers. On October 5, 1999, USRC sold its web-hosting business and assets, and stopped operating web-hosting services.

CSD received complaints from 1,590 USRC customers in 1998 and 1999 alleging that USRC charged them for web-hosting and/or interexchange services that the customers did not authorize.⁶ Pursuant to an agreement with CSD, Applicant provided web-hosting customers with \$80,277.88 in reimbursements or credits for web-hosting charges and internet related fees.⁷ Applicant also remitted to the Commission a check for \$9,141.23, which is the amount of undeliverable restitution, for deposit in the State General Fund.

On October 19, 1998, Applicant purchased a controlling interest in Choctaw⁸, six months before this application was filed. On August 31, 2001, Applicant sold its interest in Choctaw to Reconex Acquisition Corporation (Reconex). On September 6, 2001, 1-800-Reconex, the parent of Reconex, filed Advice Letter No. 14 requesting approval of the transaction.⁹ The Advice letter

⁶ This includes Pacific Bell complaint records listing 1,468 complaints.

⁷ On August 15, 2001, CSD filed a motion for approval of a proposed settlement with Applicant. The settlement was signed by Applicant on May 25, 2000, and by CSD on June 5, 2000. However it was not filed until after the web-hosting restitution had been made. The settlement also provided for \$25 in restitution to 101 customers who alleged only unauthorized long distance charges. CSD subsequently discovered additional violations by Applicant. As a result, the additional restitution was not made, and the motion was not pursued. The settlement is included as Exhibit 1 to Attachment A of this decision.

⁸ Choctaw was granted authority to resell local exchange and interexchange services by Decision (D.) 98-07-028 (U-6008-C).

⁹ 1-800-Reconex was authorized to resell local exchange services by D.97-09-034 (U-5835-C), and interexchange services by D.01-06-013 (U-6546-C).

was approved. Applicant's purchase of Choctaw violated Section 852 that requires prior Commission approval of the acquisition. In addition, Applicant's sale of Choctaw violated Section 851 that requires prior Commission approval of the sale.

IV. Settlement

On March 8, 2002, CSD and Applicant filed a motion for adoption of a settlement. The settlement is included as Attachment A to this decision.

Pursuant to the settlement, Applicant admits that it did the following:

- Applicant sold USRC to Alliance without prior Commission authorization.
- USRC failed to provide USRC customers with notice of the sale of USRC.
- Applicant purchased Choctaw without prior Commission authorization.
- Applicant sold Choctaw to Reconex without prior Commission authorization.

Applicant will pay a fine of \$20,000 for each of the above violations, for a total of \$80,000. In addition, Applicant will pay restitution of \$25 to each of 101 former long distance customers of USRC who alleged unauthorized long distance charges by USRC.

Rule 51.1 (e) of the Commission's Rules of Practice and Procedure says that the Commission will not approve settlements unless they are reasonable in light of the whole record, consistent with law, and in the public interest.

Applicant and CSD jointly sponsor the unopposed settlement. While not determinative of the reasonableness of the settlement, this fact lends support to such a conclusion.

CSD's charge in this proceeding is to protect the interests of ratepayers. Applicant represents its own interests. Therefore, the parties to the settlement are fairly reflective of the affected interests. This fact supports an inference that the settlement is reasonable.

The record contains the results of CSD's investigation as well as information provided by Applicant. The settlement is the result of negotiations between CSD and Applicant, and represents their final recommendation to the Commission. The settlement contains an admission by Applicant to four violations, and Applicant's agreement to pay an \$80,000 penalty and \$25 restitution to 101 customers. In addition, Applicant has already paid \$80,277.88 in restitution to customers, and \$9,141.23 in undeliverable restitution to the General fund. Considering these factors, the lack of opposition to the settlement, and the fact that all necessary interests were at the bargaining table, we find that the settlement is reasonable in light of the whole record.

Regarding the lawfulness of the settlement, Applicant and CSD represent that no term of the settlement contravenes any statute or Commission decision. We agree, and find that the settlement is consistent with law.

The settlement provides for the payment of a penalty for four admitted violations, and provides restitution to customers. The penalties send an important message to Applicant and other telecommunications carriers that we will not tolerate such violations. The record contains a full explanation of the parties' positions, and a full explanation of their obligations under the settlement. As a result, the settlement contains sufficient information for the Commission to carry out its future regulatory obligations with respect to the

parties and their interests. Therefore, the settlement is in the public interest, and we will approve it.

Rule 51.8 of the Commission's Rules of Practice and Procedure (Rule 51.8) provides that its adoption of a settlement does not establish a precedent unless the Commission expressly provides otherwise. The settlement states that it does not establish a precedent, and we confirm that to be the case.

V. Approval of Applicant's Sale of USRC, and Purchase and Sale of Choctaw

Applicant sold USRC to Alliance. Both USRC and Alliance were authorized to resell interexchange services. Therefore, Alliance was qualified to purchase USRC. USRC filed an advice letter in February 2000 requesting approval of the sale, and cancellation of its CPCN. The advice letter was approved. USRC has been dissolved, although it is winding up the dissolution in some states. The fact that the advice letter was approved does not eliminate the fact that it was filed after the sale had taken place, and that customers were not given proper notice. However, the settlement addresses the errors. In addition, given the amount of time that has passed since the sale, and the fact that USRC no longer exists, attempting to provide notice to the affected customers at this time would serve no purpose, and would likely not be feasible. Therefore, we confirm our earlier approval of the sale.

Applicant purchased and subsequently sold Choctaw. Applicant, as discussed below, is technically and financially qualified as a limited facilities-based and resale provider of local exchange services. Choctaw is authorized to resell local exchange and interexchange services. Since the requirements for authorization to provide limited facilities-based and resold local exchange services exceed the requirements to resell local exchange and interexchange services, Applicant was qualified to purchase Choctaw. 1-800-Reconex is

authorized to resell local exchange and interexchange services. Therefore, it is technically qualified to purchase Choctaw. 1-800-Reconex filed an advice letter requesting approval of its purchase of Choctaw. The Advice letter was approved. The fact that the advice letter was approved does not eliminate the fact that (1) Applicant purchased Choctaw prior to the filing of this application, (2) the sale of Choctaw took place prior to the Commission's approval of the initial purchase by Applicant, and (3) the sale to Reconex took place before the advice letter was filed. However, since the settlement addresses these errors, we will approve the purchase of Choctaw, and confirm our earlier approval of the sale.

VI. Financial Qualifications for a CPCN

To be granted a CPCN for authority to provide facilities-based and resold local exchange service, an applicant must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.¹⁰ Applicant provided audited financial statements that demonstrate that it meets the financial requirements.

VII. Technical Qualifications

To be granted a CPCN for authority to provide local exchange service, an applicant must make a reasonable showing of technical expertise in telecommunications or a related business. Applicant supplied biographical

¹⁰ The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

information on its management that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

Applicant represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with a telecommunications carrier that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, except as follows:

1. Applicant

In 1994, Applicant determined that some of its independent sales agents had submitted unauthorized service orders. Applicant terminated the sales agents. Subsequently, the office of the Texas Attorney General learned of the situation, and requested information about it. Applicant entered into an agreement with the Texas Attorney General whereby it must comply with Federal Communications Commission (FCC) rules regarding changing of a customer's primary long distance carrier.

On January 5, 1999, the Texas Attorney General issued a Civil Investigative Demand to Applicant regarding one of its service offerings. Applicant supplied the requested information, and has received no further communications regarding the matter.

On February 19, 1999, the FCC and the Federal Trade Commission (FTC) issued a joint inquiry into the advertising practices of telecommunications providers. Applicant was one of the companies asked to provide marketing documents. Applicant provided the documents, and has received no further communications regarding the matter.

2. Choctaw

On May 5, 2000, the Utility Consumer's Action Network (UCAN) filed a complaint against Choctaw alleging that, among other things, it did not properly provide Universal Lifeline Telephone Service. The parties reached a settlement resolving most of the concerns. The Commission, in D.01-04-038, imposed a penalty of \$5,000 for violation of the Commission's rules regarding measured rate service. Choctaw also paid UCAN \$7,848.01 for legal expenses.

In December 2000, the Texas Attorney General issued a directive requiring Choctaw to produce documents regarding its services. Applicant responded, and has heard nothing further on the matter.

3. USRC

On November 3, 1998, USRC received a Notice of Intent to Assess an Administrative Penalty from the Public Utility Commission of Texas (PUCT), because it had determined that USRC had changed the primary long distance carrier of ten customers without authorization. USRC subsequently met with PUCT staff and, on April 30, 1999, submitted an affidavit saying that the mistakes were inadvertent and that it had credited all fees associated with the ten complaints. The matter was subsequently resolved by the parties, and no penalty was assessed.

On April 19, 1999, USRC was notified by the Oregon Department of Justice (ODOJ) that it was under investigation for unfair and deceptive business practices. On July 21, 1999, USRC signed an Assurance of Voluntary Compliance (Assurance) affirming that it was in compliance with the requests made by the ODOJ, and that the Assurance did not constitute an admission of wrongdoing or liability. The Assurance also required that it pay restitution to customers, and a \$14,750 administrative penalty.

In June 1999, the Arkansas Attorney General filed a complaint against USRC alleging that it violated the Arkansas Deceptive Trade Practices Act. The parties reached a settlement that provided for restitution to customers, and a \$75,000 administrative penalty.

In the Fall of 1999, the FTC conducted an inquiry into USRC's marketing and billing practices for design and hosting of web sites. In July 2000, USRC and the FTC reached a settlement in which USRC agreed to modify certain internal procedures, and pay refunds to customers who were billed for unauthorized services. No penalty was assessed.

In June 1999, the North Carolina Attorney General filed a complaint alleging unfair and deceptive business practices by USRC regarding web page services. The parties reached a settlement that provided for restitution to customers, a \$75,000 administrative penalty and reliance on the settlement previously reached between USRC and the FTC.

On July 29, 1999, the Tennessee Regulatory Authority met with USRC regarding customer complaints about web services. The parties reached a settlement that provided for restitution to customers, a \$45,200 administrative penalty, and reliance on the settlement previously reached between USRC and the FTC.

In 1999, USRC was notified by the Alabama, Idaho and Illinois Attorneys General, and the Wisconsin Department of Agriculture, Trade and Consumer Protection that it was under investigation regarding customer complaints. The investigations were closed based on reliance on the settlement previously reached between USRC and the FTC.

On June 18, 1999, the Kansas Attorney General launched an investigation of customer complaints against USRC. The parties reached a

settlement that included a \$75,000 administrative penalty, and reliance on the settlement previously reached between USRC and the FTC.

In August 1999, the Texas Attorney General launched an investigation of customer complaints against USRC. USRC provided the requested information and documentation, and in April 2000, requested that the matter be closed. USRC is awaiting response and further investigation by the Texas Attorney General.

On September 16, 1999, the Florida Public Service Commission notified USRC that it was being investigated regarding customer complaints. The parties resolved the matter based upon reliance on the settlement previously reached between USRC and the FTC, and withdrawal of USRC's authority to provide service in Florida subsequent to approval of its sale to Alliance.

On May 16, 2000, the Tennessee Attorney General filed a complaint against USRC alleging violations of the Tennessee Consumer Protection Act. The parties reached a settlement that included restitution to customers, payment of an administrative penalty of \$4,000 and investigative costs of \$5,000, an Assurance of Voluntary Compliance, reliance on the settlement previously reached between USRC and the FTC, and reliance on the previous settlement between USRC and the Tennessee Regulatory Authority.

Applicant no longer owns Choctaw or USRC, and none of Applicant's current management was part of the management of Choctaw or USRC. Given the above actions by other states, the FCC, and the FTC, as well as the fine and restitution imposed herein, we expect Applicant to avoid such errors in the future. Therefore, we find that Applicant has sufficient experience and knowledge to operate as a telecommunications carrier.

VIII. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment B to this decision. In its compliance tariff filing, Applicant is directed to correct these deficiencies as a condition of our granting approval of its tariffs.

IX. California Environmental Quality Act (CEQA)

The CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Applicant states that it will not be constructing any facilities for the purpose of providing local exchange services, except for equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant must file for additional authority, and submit to any necessary CEQA review, before it can construct facilities except as noted above.

X. Conclusion Regarding CPCN

Given the actions by other states, the FCC, and the FTC, and the restitution and fines included in the settlement, we see no reason not to grant the requested CPCN. We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant Applicant a CPCN to provide limited facilities-based and resold local exchange service in Pacific and Verizon's service territories subject to compliance with the terms and conditions set forth herein. However, we remind Applicant that we expect full compliance with all Commission rules and orders as well as applicable statutes.

In order that customers may be paid restitution as soon as possible, and because of the public interest in competitive local exchange services, this decision should be effective immediately.

XI. Request to File Under Seal

Applicant requests that the financial information filed with this application, and on August 22, 2001, be filed under seal. The financial information consists of audited financial statements for Applicant and Choctaw, the purchase agreement between Applicant and Choctaw, and Applicant's estimated customer bases for its first and fifth years. Applicant represents that the information is proprietary and sensitive. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

XII. Categorization and Need for Hearings

In Resolution ALJ 176-3014 dated April 22, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. CSD filed a protest in this proceeding. The Assigned Commissioner's January 4, 2002 ruling and scoping memo determined that hearings were necessary. Hearings were held on March 12, 2002, and the matter was submitted.

XIII. Comments on Proposed Decision

Section 311(d) provides that this decision must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Pursuant to Section 311(d), all parties have stipulated to reduce the comment period to three days.

Findings of Fact

1. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific, Verizon, RTC and CTC.
2. On December 24, 1999, Applicant sold USRC to Alliance.
3. On February 3, 2000, USRC filed Advice Letter No. 4, requesting approval of the sale and requesting cancellation of its CPCN. The Advice letter was approved.
4. Applicant's sale of USRC violated Section 852.
5. USRC failed to provide its customers with notice of the sale as required by Section 2889.3(a).
6. In addition to its interexchange operations, USRC sold web-hosting services.
7. On March 7, 1999, USRC stopped offering web-hosting services.
8. USRC stopped soliciting interexchange customers in July 1999.
9. On October 5, 1999, USRC sold its web-hosting business and assets, and stopped operating web-hosting services.
10. CSD received complaints from 1,590 USRC customers in 1998 and 1999 alleging that USRC charged them for web-hosting and/or interexchange services that they did not authorize.
11. Pursuant to an agreement with CSD, Applicant provided web-hosting customers with \$80,277.88 in reimbursements or credits for web-hosting charges and internet related fees, and remitted to the Commission a check for \$9,141.23, which is the amount of undeliverable restitution, for deposit in the State General Fund.
12. On October 19, 1998, Applicant purchased a controlling interest in Choctaw.

13. On August 31, 2001, Applicant sold its interest in Choctaw to Reconex.

14. On September 6, 2001, 1-800-Reconex, the parent of Reconex, filed Advice Letter No. 14 requesting approval of the transaction. The Advice letter was approved.

15. Applicant's purchase and sale of Choctaw violated Sections 851 and 852, respectively.

16. Applicant admits that it sold USRC without prior Commission authorization.

17. Applicant admits that USRC failed to provide its customers with notice of the sale.

18. Applicant admits that it purchased Choctaw without prior Commission authorization.

19. Applicant admits that it sold Choctaw without prior Commission authorization.

20. Pursuant to the settlement, Applicant will pay a fine of \$80,000, and restitution of \$25 to each of 101 former long distance customers of USRC who alleged unauthorized long distance charges by USRC.

21. Applicant and CSD jointly sponsor the unopposed settlement.

22. CSD's charge in this proceeding is to protect the interests of ratepayers.

23. Applicant represents its own interests.

24. The record contains the results of CSD's investigation as well as information provided by Applicant.

25. The settlement is the result of negotiations between CSD and Applicant, and represents their final recommendation to the Commission.

26. Applicant has already paid \$80,277.88 in restitution to customers, and \$9,141.23 in undeliverable restitution to the State General Fund.

27. No term of the settlement contravenes any statute or Commission decision.

28. The settlement provides for the payment of a penalty for four admitted violations.

29. The penalties provided in the settlement send an important message to Applicant and other telecommunications carriers that the Commission will not tolerate such violations.

30. The record contains a full explanation of the parties' positions, and a full explanation of their obligations under the settlement.

31. The settlement contains sufficient information for the Commission to carry out its future regulatory obligations with respect to the parties and their interests.

32. Rule 51.8 provides that settlements do not establish a precedent unless the Commission expressly provides otherwise.

33. Since USRC and Alliance were both authorized to resell interexchange services, Alliance was qualified to purchase USRC.

34. USRC has been dissolved, although it is winding up the dissolution in some states.

35. Attempting to provide notice to the affected USRC customers at this time would serve no purpose, and would likely not be feasible.

36. Choctaw is authorized to resell local exchange and interexchange services.

37. The requirements for authorization to provide limited facilities-based and resold local exchange services exceed the requirements to resell local exchange and interexchange services.

38. Applicant was qualified to purchase Choctaw.

39. Since 1-800-Reconex is authorized to resell local exchange and interexchange services, it is qualified to purchase Choctaw.

40. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

41. Applicant has sufficient additional cash or cash-equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

42. Applicant's management possesses sufficient experience and knowledge to provide local exchange services to the public.

43. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment B to this decision. Except for these deficiencies, Applicant's draft tariffs complied with the Commission's requirements.

44. Applicant does not propose to construct any facilities, except for equipment to be installed in existing buildings or structures, in order to provide the proposed service.

45. Public disclosure of the financial information filed under seal would place Applicant at an unfair business disadvantage.

Conclusions of Law

1. Applicant sold USRC without prior Commission authorization.
2. USRC failed to provide USRC customers with notice of the sale of USRC.
3. Applicant purchased Choctaw without prior Commission authorization.
4. Applicant sold Choctaw to Reconex without prior Commission authorization.
5. The parties to the settlement are fairly reflective of the affected interests.
6. The settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

7. The settlement should be approved.
8. The Commission's approval of the settlement should not establish a precedent.
9. The Commission's earlier approval of the sale USRC should be confirmed.
10. The purchase of Choctaw should be approved.
11. The Commission's earlier approval of the sale of Choctaw should be confirmed.
12. Applicant has the financial ability to provide the proposed service.
13. Applicant has made a reasonable showing of technical expertise in, or related to, telecommunications.
14. Public convenience and necessity require the competitive local exchange services to be offered by Applicant, subject to the terms and conditions set forth herein.
15. The application should be granted to the extent set forth below.
16. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders and statutes that pertain to California public utilities.
17. Applicant's initial tariff filing should correct the deficiencies noted in its draft tariffs as indicated in Attachment B to this decision.
18. Since Applicant does not propose to construct any facilities, except for equipment to be installed in existing buildings or structures, it can be seen with certainty that granting it authority to provide local exchange services will not have a significant adverse effect upon the environment.
19. In order that restitution may be paid as soon as possible, and because of the public interest in competitive local exchange services, the following order should be effective immediately.

20. Applicant's request to file its financial information under seal should be granted for two years.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to VarTec Telecom, Inc. (Applicant) to provide limited facilities-based and resold local exchange services in the service territories of Pacific Bell Telephone Company and Verizon California Inc., subject to the terms and conditions set forth below.

2. The joint motion of Applicant and the Commission's Consumer Services Division, filed on March 8, 2002, for approval of a settlement is granted, and the settlement is adopted. The settlement is included as Attachment A to this decision.

3. The Commission's approval of the settlement does not establish a precedent.

4. Applicant's sale of U.S. Republic Communications, Inc. to Alliance Group Services, Inc. is approved.

5. Applicant's purchase of a controlling interest in Choctaw Communications, Inc. d/b/a Smoke Signal Communications (Choctaw) is approved.

6. Applicant's sale of its controlling interest in Choctaw to Reconex Acquisition Corporation is approved.

7. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI,

and shall correct the deficiencies noted in Attachment B. The tariff shall be effective not less than one day after approval by the Commission's Telecommunications Division. Applicant shall comply with its tariffs.

8. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

9. The corporate identification number assigned to Applicant, U-5384-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

10. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044), as well as all other applicable Commission rules, decisions, GOs and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

11. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment C to this decision.

12. Applicant is not authorized to construct facilities, except for equipment to be installed in existing buildings or structures.

13. Applicant's request to have the financial information filed with this application, and on August 22, 2001, kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

14. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further

withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

15. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

THE SETTLEMENT OF THE PARTIES

I. THE PARTIES

The following parties enter into this Settlement with the Consumer Services Division (CSD) of the California Public Utilities Commission (Commission), which resolves the CSD Protests respectively filed in A.99-04-011 and A.01-10-026:

- VarTec Telecom, Inc. (VarTec); and
- VarTec Telecom Holding Company (VarTec Holding), VarTec's wholly owned subsidiary, and on behalf of U.S. Republic Communications, Inc. (USRC), and Choctaw Communications, Inc. (Choctaw).

For purposes of this Settlement, the term "Parties" means collectively all of the above, including CSD. The date of this Settlement is the 8th day of March 2002.

II. RECITALS

CSD protested the applications filed in A.99-04-011 and A.01-10-026;

In connection with A.99-04-011, VarTec, VarTec Holding, USRC, and Choctaw jointly and severally admit that the following four violations¹ occurred:

- The sale of USRC by VarTec Holding without prior Commission authorization;
- The purchase of Choctaw by VarTec Holding without prior Commission authorization;
- The sale of Choctaw to 1-800-Reconex by VarTec Holding without prior Commission authorization; and
- The omission by USRC of providing USRC customers with notice according to Section 2889.3(a).²

VarTec Holding will pay the Commission a fine of \$80,000 (\$20,000 per violation), on behalf of USRC and Choctaw;

VarTec Holding will provide restitution of \$25 per customer to 101 long distance customers, within 30 Days after the Commission approves this Settlement and as prescribed by the CSD Motion for Commission Approval and the attached Settlement, dated August 15, 2001³;

¹ Any other alleged violations asserted in CSD's Protests of A. 99-04-011 or A.01-10-026, are withdrawn effective upon the Commissions acceptance of CSD's request to withdraw its Protests.

² "Section" means provisions of the California Public Utilities Code, unless otherwise stated.

VarTec has cooperated with CSD's data requests;

CSD will request in the "All Parties Joint Motion for Commission Approval with the Attached Settlement" (Joint Motion and Settlement), a withdrawal of its respective Protests in A.99-04-011 and A.01-10-026 and will not oppose either of the two applications;

The Parties will jointly file the same Joint Motion and Settlement in both A.99-04-011 and A.01-10-026; and

The Parties mutually desire to fully and permanently settle the CSD Protests in A.99-04-011 and A.01-10-026, and to avoid the time, expense, and uncertainty of evidentiary hearings;

THEREFORE, because of the foregoing considerations and based on the terms, covenants, and conditions stated below, the Parties by themselves or their authorized representative(s) agree as follows:

III. TERMS, COVENANTS, AND CONDITIONS

Within 10 Days⁴ after all the Parties have signed this Settlement, VarTec Holding will pay the Commission a fine of \$80,000.⁵ The fine will be delivered to CSD, Attention: Cleveland W. Lee, Commission Attorney, 505 Van Ness Avenue, San Francisco CA 94102, in the form of a bank check made payable to the order of the Commission for the amount of \$80,000.

With the knowledge and consent of all the Parties, the \$80,000 will be deposited into an interest bearing escrow bank account established by the Commission Fiscal Office for this Settlement. On or about the date when the Commission issues its decision approving this Settlement, the \$80,000 (plus any interest accruing on it) will be deposited as a fine into the General Fund of California.

If pursuant to Rule 51.7 of the Commission Rules of Practice and Procedure (Rule) the Commission modifies or rejects the Settlement, the \$80,000 (plus interest) will be returned to VarTec Holding as soon as practicable after the issuance date of the Commission changes, unless the Parties mutually agree to leave the \$80,000 in escrow while they evaluate their response according to Rule 51.7.

In the Joint Motion and Settlement, CSD will request to withdraw its Protests in A.99-04-011 and A.01-10-026, and that the Commission approval of the Settlement and its withdrawal requests, be made effective on the date when the Commission issues its decision.

³ That August 15, 2001 CSD Motion and Settlement is attached as Ex. 1 hereto and incorporated by reference as if fully set forth in this document.

⁴ "Day" means a calendar day, unless stated otherwise.

⁵ The Parties hereby stipulate that at all the times in question in A.99-04-011, from the date of each respective acquisition to the date of each respective sale, VarTec Holding controlled USRC and Choctaw.

IV. ENFORCEMENT

The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement. No Party may bring an action pertaining to this Settlement in any local, state or federal court, or administrative agency without first having exhausted its administrative remedies at the Commission.

This Settlement shall be governed by and interpreted in accordance with the laws of the State of California and Commission rules and regulations.

This Settlement shall constitute no approval of, or precedent regarding, any legal principle or issue of law or fact in this proceeding or in any future proceeding, pursuant to Rule 51.8.

If requested by a law enforcement agency or court order, CSD may provide information regarding this Settlement or otherwise co-operate to the extent requested.

The Parties agree that they will not file any application for rehearing of any order adopting the Settlement, or take any other action in any way inconsistent with full support of this Settlement.

V. COMMISSION APPROVAL

This Settlement is subject to approval and adoption by the Commission. The Parties agree to furnish such additional information, documents, and/or testimony as the Commission or CSD may request, that would be necessary to implement the Joint Motion or Settlement.

The Parties agree to execute or shall cause to be executed, any other documents or to take any other action as may be necessary to implement the Joint Motion and Settlement.

VI. EXECUTION OF SETTLEMENT

This Settlement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original and shall together constitute the same Settlement.

This Settlement constitutes the entire agreement among the Parties, which cannot be amended or modified without the express written consent of all the Parties.

The provisions of this Settlement are not severable. If, pursuant to Rule 51.7 the Commission modifies any provision of this Settlement, all the Parties must consent to such changes. If any change is unacceptable to one or more of the Parties, then the Settlement would be deemed rescinded. A Party shall be deemed to have consented to the Commission modification unless within 10 Days following the date of issuance of the Commission proposed modification(s), the objecting Party has filed with the Commission its objections and notifies in writing the other Parties of such filing and its objections.

Each Party represents that it has investigated the facts and law pertaining to the matters described in this Settlement. No Party has relied, or presently relies, upon any statement, promise, or representation by any other Party, whether oral or written, except as specifically set forth in this Settlement.

This Settlement shall be binding upon the respective Parties, their successors, assignees, executors, administrators, parent companies, subsidiary companies, affiliates, divisions, units, officers, directors, and ten-percent or greater shareholders.

The Parties acknowledge and stipulate that this Settlement is fair and not the result of any fraud, duress, or undue influence by any other Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement. Moreover, each Party has had its respective attorney or other authorized person review the terms of this Settlement. By executing this Settlement each Party declares that the provisions herein are adequate, reasonable, and mutually agreed upon, and that they are entering this Settlement freely and voluntarily.

The undersigned hereby acknowledge and covenant that they have been duly authorized to execute this Settlement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency and/or employment.

VII. CONCLUSION

The Parties have executed this Settlement by their respective authorized representative(s) as signed and dated below.

CONSUMER SERVICES DIVISION,

By: _____ Date: _____

Richard W. Clark

Director

_____ Date: _____

Cleveland W. Lee

Attorney for Consumer Services Division

VARTEC TELECOM, INC.

By: _____ Date: _____

VARTEC TELECOM HOLDING COMPANY

By: _____ Date: _____

(END OF ATTACHMENT A)

EXHIBIT 1 TO ATTACHMENT A

STIPULATION FOR SETTLEMENT

I. THE PARTIES

This STIPULATION FOR SETTLEMENT (Agreement) is entered into this ____ day of May 2000, by and among the following persons, hereinafter collectively referred to as the "Parties":

- CONSUMER SERVICES DIVISION (CSD) of the CALIFORNIA PUBLIC UTILITIES COMMISSION (COMMISSION);
- VARTEC TELECOM, INC. (VARTEC);
- U.S. REPUBLIC COMMUNICATIONS, INC.
- (U 5773-C)(U.S. REPUBLIC), a switchless reseller of intra- and inter-LATA telephone services within California; and
- The stockholders, directors, officers, employees, agents, predecessors, successors-in-interest of, and any person or corporation affiliated with, VARTEC and/or U.S. REPUBLIC.

This Agreement shall become effective and binding on the date when all the Parties have signed it.

II. RECITALS

WHEREAS, since 1996 VARTEC has owned, controlled, operated, and directed U.S. REPUBLIC as a majority - owned subsidiary;

WHEREAS, VARTEC on April 14, 1999, applied for Commission authority in A.99-04-011 for the following: (t) to provide local exchange and *access* telephone *services in California*, and (ii) to purchase a majority membership interest in Choctaw Communications, L.C. (U-6008-C), a switchless reseller of local- and inter-exchange *telecommunications* services within California;

WHEREAS, on September 3, 1999, CSD protested VARTEC's application alleging that VARTEC's majority - owned subsidiary, U.S. REPUBLIC, was billing California consumers without their authorization a monthly recurring service fee (not including

State and Federal taxes and other charges) of approximately TWENTY-FOUR DOLLARS and NINETY-FIVE CENT'S (\$24.95) for internet worldwide-web services and/or other charges. The billings began appearing in July 1998 on consumers' monthly telephone billing statements sent by their local exchange carrier (LEC) (e.g., Pacific Bell or GTE);

WHEREAS, effective March 7,1999, in California U.S. REPUBLIC ceased soliciting LEC-billed web-hosting services and as of October 5, 1999, ceased operating any web-hosting services;

WHEREAS, on December 24,1999, U.S. REPUBLIC entered into an agreement to sell its California long distance customer bases and other related assets to ALLIANCE GROUP SERVICES, INC. (ALLIANCE) (06047-C)¹;

WHEREAS, U.S. REPUBLIC will liquidate and dissolve as an on-going business after selling its consumer bases and will request herein and in an All Party Joint Motion that the Commission *cancel* its Certificate of Public Convenience and Necessity (CPCN)²;

WHEREAS, this Agreement is only for settlement purposes and constitutes no admission by VARTEC and/or U.S. REPUBLIC that they have violated any California statute or Commission rules or regulations;

WHEREAS the Parties hereby agree to compromise, settle, and adjust all issues that have been or could have been asserted in A.99-04-011 as protested by CSD and based *on the* terms and conditions set forth in this Agreement.

¹ Alliance was given Commission authority to resell intra- and inter-LATA telephone services in D.98-08-069, approving A.98-07-045 (filed July 27, 1998),

² Letter from Carol Even to Coordinator, U.S. REPUBLIC, to the Commission, dated January 6, 2000, letter from Hammond, Legal Counsel, VarTec, on C1,-vzland W. Lee, COMailss1UI1 Staff Counsel, dated November 8, 1999.

III. TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the foregoing and the mutual terms, covenants, and/or conditions herein stated, the parties themselves or by their authorized representative hereby agree as follows:

1. Within TEN (10) calendar days or less after the Parties have executed this Agreement, CSD will submit for restitution to VARTEC and/or U.S. REPUBLIC, a list of California consumers who have complained during (but not limited to) the period from July 1, 1998, through February 29, 2000, to their local exchange carrier (LEC) or the Commission's Consumer Affairs Branch (CAB), regarding U.S. REPUBLIC billings for web-hosting charges, Internet-related service fees, or other charges allegedly unauthorized by the consumer. This list(s) (hereinafter referred to as the "CSD Consumer Data") will include the consumer's name, billing address, billing telephone number (BTN), or other data and is subject to the Non-Disclosure and Protective Agreement signed by VARTEC and U.S. REPUBLIC with Pacific Bell on December 30, 1999, which is incorporated by reference as if fully set forth herein.

2. Within ONE HUNDRED TWENTY (120) calendar days after receiving the CSD Consumer Data described above (hereinafter referred to as the "ONE HUNDRED TWENTY (120) Day Period"), VARTEC and/or U.S. REPUBLIC shall fully reimburse the consumers presented in the CSD Consumer Data for any and all , amounts billed and collected by U.S. REPUBLIC, in the following manner unless otherwise reported to CSD:

- VARTEC and/or U.S. REPUBLIC will mail consumers a company check made payable to the consumer and in an amount corresponding to the amount of charges billed and collected by U.S. Republic, which has not previously been credited or reimbursed by the consumer's LEC, VARTEC, or U.S. REPUBLIC;

- All U.S. Republic charges that were unauthorized and not yet paid by the .consumer or uncollected by VARTEC and/or U.S. REPUBLIC, shall be canceled by VARTEC and/or U.S. REPUBLIC;
- VARTEC and/or U.S. REPUBLIC will send the checks in sufficient time to afford each consumer recipient at least NINETY (90) calendar days following the date of mailing, to deposit or cash the check;
- All checks will have an expiration date, not later than the last day of the ONE HUNDRED TWENTY (120) Day Period; -
- VARTEC and/or U.S. REPUBLIC will include with each reimbursement check an explanation for the reimbursement, the time allowed for deposit or cashing of the check, and the expiration date thereof.

3. For those consumers whom VARTEC and/or U.S. REPUBLIC cannot credit or otherwise reimburse because of an erroneous mailing address or other circumstance preventing restitution, VARTEC and/or U.S. REPUBLIC shall make reasonable efforts to correct the problem (e.g., request the LEC for a forwarding mailing address) prior to the expiration of the ONE HUNDRED TWENTY (120) Day Period

4. Within FIVE (5) calendar days after the end of the ONE HUNDRED TWENTY (120) Day Period, VARTEC and/or U.S. REPUBLIC shall remit to the Commission in the form of a company check made payable to the Commission, an amount corresponding to the total sum of all company reimbursement checks that were undeliverable or expired as of such date. The remittance shall be delivered to CSD Supervising Special Agent Mark Clairmont at 505 Van Ness Avenue, San Francisco CA 94102-3298. After receipt thereof, the Commission shall deposit the check into the General Fund of the State of California. VARTEC and/or U.S. REPUBLIC shall have no further duty of restitution under this Agreement to a

consumer to whom a company reimbursement check was sent but became undeliverable or expired and was consequently remitted to the Commission

5. Within FIVE (5) calendar days after the end of the ONE HUNDRED TWENTY (120) Day Period, VARTEC and/or U.S. REPUBLIC shall report in writing to CSD Supervising *Special Agent Mark* Clairmont (same address as stated above), the following data for each consumer presented in the CSD Consumer Data:

- the consumer's name, address, BTN, and beginning and ending dates of service;
- the total amount billed and collected by U.S. REPUBLIC's;
- the amount of credit or reimbursement received by the consumer for U.S. REPUBLIC charges;
- the total sum that VARTEC and/or U.S. REPUBLIC is remitting to the Commission as a result of undeliverable or expired company reimbursement checks; and the name, address, and
- BTN of the consumer whose reimbursement is being remitted to the Commission.

6. As soon as practicable after receiving VARTEC and/or U.S. REPUBLIC's Report, CSD shall review whether VARTEC and/or U.S. REPUBLIC have fully reimbursed all the consumers presented in the CSD Consumer Data. If CSD concurs and so states in writing, VARTEC and/or U.S. REPUBLIC will prepare a declaration within TEN (10) calendar days or less thereafter, which will be attached to the Agreement and filed with the Commission. Such declaration shall be signed by an officer of VARTEC and/or U.S. REPUBLIC under oath attesting that the statements therein are true and accurate, and declare the following:

- the total number of California consumers reimbursed pursuant to this Agreement;
- the total sum of such reimbursements; and
- the total sum remitted to the Commission by VARTEC and/or U.S. REPUBLIC as result of undeliverable or expired company reimbursement check,

7. After VARTEC and/or U.S. REPUBLIC have performed all the terms and conditions in Paragraphs 1 through 6 above, the Parties shall as soon as practicable file an All Party Joint Motion for Commission approval and adoption of this Agreement. The Motion shall also include (i) SD's request to withdraw its September 3, 1999, Protest of VARTEC's Application, A.99-04-011; and (ii) VARTEC and U.S. REPUBLIC's request to have the Commission cancel U.S. REPUBLIC's operating authority effective as of the date of the Commission decision. CSD will close its investigation of U.S. REPUBLIC also on the same date.

8. VARTEC and/or U.S. REPUBLIC further agree to credit or otherwise reimburse California consumers (i) who were not included in the CSD Consumer Data; (ii) who complained on or after March 1, 2000, to their LEC, CAB, U.S. REPUBLIC, or VARTEC, that U.S. REPUBLIC billed them without their consent for web-hosting charges, related service fees, and/or other charges; (iii) who can provide reasonable proof (e.g., telephone billing statements) of such unauthorized charges; and (iv) for whom VARTEC or U.S. REPUBLIC has no reasonable proof of prior consumer authorization.

9. VARTEC and/or U.S. REPUBLIC will cease any bill collection efforts, if any, to compel payment by any California consumer described above, of any web-hosting or telephone service fees, billings, charges, and/or balances that was unauthorized by the consumer. Further, VARTEC and/or U.S. REPUBLIC will direct any bill collection services in writing to purge any records referencing any consumers' nonpayment of past or present outstanding debts owed to VARTEC and/or U.S. REPUBLIC that is attributable to such unauthorized billing by U.S. REPUBLIC.

10. VARTEC and U.S. REPUBLIC agree to be jointly and severally responsible in performing *the* duties and obligations of this Agreement. VARTEC further guarantees unconditionally and irrevocably U. S. REPUBLIC's performance under this Agreement. If U. S. REPUBLIC is sold, dissolved, or otherwise unable to

perform its duties and obligations as set forth in this Agreement, VARTEC shall immediately assume and perform such responsibilities.

11. VARTEC and/or U.S. REPUBLIC will immediately comply with all Commission statutes, rules, or regulations.

12. CSD will recommend that in this proceeding the Commission impose no fines, penalties or any remedies other than those set forth in this Agreement.

13. This Agreement is subject to approval and adoption by the Commission. The Parties agree to furnish such additional information, documents, and/or testimony as the Commission may request in reference to the Agreement and/or Motion.

14. The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Agreement. No Party may bring an action pertaining to this Agreement in any local, state, federal court or administrative agency without first having exhausted its administrative remedies at the Commission.

15. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and Commission rules and regulations.

16. The Parties agree that no signatory to this Agreement or any employee of the Commission, VARTEC, or U.S. REPUBLIC assumes any personal liability because of this Agreement.

17. The Parties each agree to execute and/or shall cause to be executed, any other documents or to take any other action as may be necessary to effectively consummate this Agreement.

18. No Party shall have any authority to bind any other Party executing this Agreement or to act as an agent or representative for any other Party unless expressly authorized in writing by such other Party.

19. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors,

purchasers, heirs, assigns, partners, representatives, parent companies, subsidiary companies, affiliates, divisions, units, agents, employees, attorneys, officers, directors, and/or shareholders.

20. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original and shall together constitute the same Agreement.

21. The provisions of this Agreement are not severable. If any Party fails to perform its respective obligations under this Agreement, the Agreement may be regarded as rescinded. Further, if the Commission or any court of competent jurisdiction overrules as lay invalid or modifies any material provision of this Agreement, then this Agreement shall be deemed entirely rescinded.

22. Each Party represents that it has investigated the facts and law pertaining to the matters described in this Agreement. No Party has relied or presently relies upon any statement, promise or representation by any other Party, whether oral or written, except as specifically set forth in this Agreement. Each Party expressly assumes the risk of any mistake of law or fact made by such Party or its authorized representative.

23. The undersigned hereby acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency and/or employment.

24. The Parties acknowledge and stipulate that this Agreement is fair and not the result of any fraud, duress, or undue influence by any other Party. Each Party hereby states that it has read and fully understand its rights, privileges, and duties under this Agreement. Moreover, each Party has had its respective attorney or other authorized person review the terms of this Agreement. Therefore, by executing this Agreement each Party declares that the provisions herein are adequate, reasonable,

and mutually agreeable; and that they are entering this Agreement freely and voluntarily.

25. This Agreement is the entire agreement among the parties, which cannot be amended or modified without the express written consent of an the parties.

26. The Parties jointly request the Commission to retain jurisdiction of this case and over the Parties personally until final performance of the Agreement stated herein.

IV. CONCLUSION

IN WITNESS WHEREOF, the Parties hereto have caused this. Agreement to be duly executed by their respective authorized representatives as of the date hereof.

CONSUMER SERVICES DIVISION,

By:

William R. Schulte Director
Director

Date:

By:

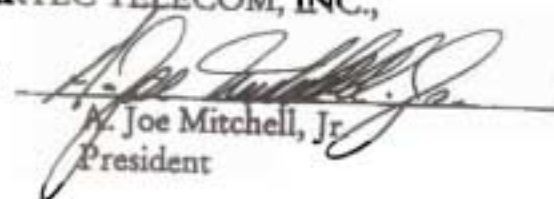
 5/31/00

Cleveland W. Lee
Staff Counsel

Attorney for CONSUMER SERVICES DIVISION

VARTEC TELECOM, INC.,

By:


A. Joe Mitchell, Jr.
President

Date. ; , 4 711, ZS"
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By.



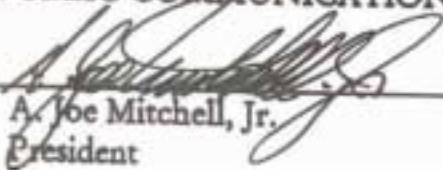
May 25, 2000

Melissa A. Smith

Attorney for VARTEC TELECOM, INC:

U.S. REPUBLIC COMMUNICATIONS, INC.,

By:


A. Joe Mitchell, Jr.
President

Date:

May 25, 2000



Date:

May 25, 2000

Melissa A. Smith

Attorney for U.S. REPUBLIC COMMUNICATIONS, INC.

TOTAL P.14

CERTIFICATE of SERVICE

I hereby certify that I have this day served the foregoing document MOTION BY THE CONSUMER SERVICES DIVISION FOR COMMISSION ADOPTION OF THE ATTACHED PROPOSED SETTLEMENT on the Parties of record in this proceeding by faxing and mailing via first-class mail a copy thereof properly addressed to each party.

Dated at San Francisco, California this 15th day of August 2001.


Halina Marcinkowski

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document
ALL
PARTIES JOINT MOTION FOR COMMISSION ADOPTION OF ATTACHED SETTLEMENT on the parties of record in A.99-04-01 and A.01-10-026, by mailing via first-class mail a copy thereof properly addressed to each party.

Dated at San Francisco, California this 8th day of March, 2002.


NEELY SARMIENTO

(END OF EXHIBIT 1 TO ATTACHMENT A)

ATTACHMENT B

The following are the deficiencies to the proposed tariffs of VarTec Telecom, Inc. to be corrected in its tariff compliance filing:

1. On each tariff sheet, add a vertical line on both the right and left margins.
2. Original Title Page. The tariff language mentions a “dba” name. If the company has a “dba” name, the complete name of the company -including the “dba” name- must be shown on the top left-hand corner of each tariff sheet.
3. Sheet No. 22. Service Dispute Resolution. Revise tariff language to comply with: (1) all the requirements of Rule 8, Appendix B of Decision (D.) 95-07-054, and (2) Public Utilities Code Section 736 which allows a customer to dispute a bill within three years.
4. Sheet No. 25. Contracts. Contracts shall be subject to the requirements of General Order No. 96-A.
5. Sheet No. 29. Deposits. Prompt and timely payment of all charges for twelve consecutive billing periods is not a requirement for refund of deposits. (See Rule 5, Appendix B of D.95-07-054).
6. Sheet No. 34. Rendering and Payment of Bills, (F). Include the surcharges and fee shown in Attachment C.
7. Sheet No. 34. Rendering and Payment of Bills, (G). Backbilling for a period of 1½ years, in cases involving fraud, is applicable only to an interexchange service carrier. Revise tariff accordingly.
8. Sheet Nos. 50 & 51. Change of Service Providers. Include tariff language to indicate the applicable penalty for violation of each rule.
9. Sheet No. 67. Special Promotions. All promotions must be approved by the Commission. There is no blanket authority for promotions.

10. Sheet No. 74. Application of Rates. Clarify whether the company plans to provide local exchange service to residential customers. If that is the case, include tariff rates for residential customers and Universal Lifeline Telephone Service (ULTS). Also, include tariffs on ULTS income limitations.

11. Include tariffs for: (1) Directories; (2) Pro-rating of bills; (3) Privacy; and (4) Sample forms.

(END OF ATTACHMENT B)

ATTACHMENT C**REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS**

1. Applicant shall file a written acceptance of the certificate granted in this proceeding.

2. Applicant is subject to:

- a. The current 1.45% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16594, October 10, 2001);
- b. The current 0.481% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16504, March 27, 2001);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 2000-2001 fiscal year (Resolution M-4800);
- d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16521 at 0.200%, June 14, 2001; set by Resolution T-16589 at 0.300% effective January 1, 2002, October 10, 2001);
- e. The current 1.47% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16585, October 10, 2001); and
- f. The current 0.300% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund

(D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16584, October 10, 2001).

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4.E of Decision (D.) 95-12-056:

“E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

- “(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice. Customer notification is not required for rate decreases.
- “(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- “(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.
- “(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- “(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.”
- “(6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.
- “(7) CLCs shall file tariffs in accordance with PU Code § 876.”

4. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

5. Applicant shall file a service area map as part of its initial tariff.

6. Prior to initiating service, Applicant shall provide the Commission’s Consumer Services Division with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

7. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

8. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

9. In the event Applicant’s books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission’s offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

10. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment D to this decision.

11. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

12. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

13. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.

14. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

15. Applicant is exempt from Pub. Util. Code §§ 816-830.

16. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

17. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

(END OF ATTACHMENT C)

ATTACHMENT D
ANNUAL REPORT

An original and two copies shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Number and date of the Commission decision granting the CPCN.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-1961.

(END OF ATTACHMENT D)