

Decision 09-10-010 October 15, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CVT Prepaid Solutions, Inc. for Registration as an Interexchange Carrier Telephone Corporation Pursuant to the Provisions of Public Utilities Code Section 1013.

Application 08-11-022
(Filed November 20, 2008)

**DECISION DISMISSING APPLICATION OF CVT PREPAID SOLUTIONS, INC.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Summary

This decision responds to CVT Prepaid Solutions, Inc.'s (CVT's) request to withdraw its application for a certificate of public convenience and necessity to provide inter- and intra-local access and transport area services in California as a non-dominant interexchange carrier by dismissing the application and places requirements on any subsequent applications for authorization to provide telecommunications services in California filed by CVT and/or its principals.

Discussion

On November 20, 2008, CVT filed an application for a certificate of public convenience and necessity to provide inter- and intra-local access and transport area services in California as a non-dominant interexchange carrier. The Consumer Protection and Safety Division of the California Public Utilities

Commission (CPSD) filed a protest to the CVT application on January 2, 2009.¹

Among other things, the CPSD protest alleged that:

1. CVT has been operating in California since August 2008 without the appropriate registration under Public Utilities Code Section 1013.
2. CVT failed to disclose that STi Prepaid, LLC (STi) is an affiliate of CVT.
3. In its application CVT did not disclose that it previously entered into a settlement with the Florida Attorney General for deceptive advertising.
4. CVT did not disclose that in a former incarnation, as Orion Telecommunications, it filed for Chapter 7 bankruptcy and had at least one formal complaint against it granted by the Federal Communications Commission.

On January 27, 2009, CPSD was informed that CVT had been acquired by its former affiliate, STi. Thus, it appeared that the circumstances of the CVT application had changed. By ruling dated March 19, 2009 notice was sent to the CPSD and CVT (the parties to the proceeding), and STi that a Prehearing Conference (PHC) had been set to clarify CVT's status as an applicant and entity. The PHC was held on Wednesday, April 15, 2009, at the Commission. CVT did not appear and the only appearance made was by CPSD. By email dated April 16, 2009, counsel for STi informed the Administrative Law Judge (ALJ) and representatives of CPSD that its failure to appear was the result of an inadvertent mistake, that STi was not representing CVT, and that the transcript of the PHC reflected some misconceptions that STi would like to clarify. STi reiterated these

¹ Decision (D.) 09-01-003 which erroneously granted CVT's application was rescinded by D.09-01-005.

points at a telephonic conference with the ALJ and representatives of CPSD on April 24, 2009.²

On May 12, 2009, CVT filed a Motion to Withdraw Application (A.) 08-11-022. CVT's motion states that on December 1, 2008, less than two weeks after the application was filed, CVT consummated a transaction that transferred all of its assets related to the provision of prepaid calling card services, including tangible prepaid card inventory, customer agreements and contracts, and vendor agreements, and contracts, to STi.³ According to CVT, "as a result of STi's acquisition of its calling card assets, CVT is no longer in the prepaid calling card business and not otherwise providing or seeking to provide regulated telecommunications services in the State of California."⁴ As CVT no longer requires the requested authorization, it has requested that its application in this proceeding be withdrawn.

CPSD responded to CVT's request to withdraw its application on June 11, 2009. CPSD noted that the facts uncovered in its investigation suggested several violations. Among other things, CPSD's investigation found that CVT appears to have been operating illegally for several months in California prior to filing its application for registration; that CVT may have failed to disclose affiliates as required by the application form; that CVT may have failed to

² CPSD served a data request on STi on April 21, 2009. Because STi was not and is not a party to this proceeding, a dispute related to the data request was not addressed in the phone conference.

³ By CVT's account, the transfer of its assets to STi occurred before CPSD filed its protest.

⁴ Neither CVT nor STi claims to have either sought or obtained Commission approval for this transaction.

disclose a settlement with the Florida Attorney General for deceptive advertising; and that CVT may have failed to disclose bankruptcies and prior administrative sanctions against its predecessor entity.⁵ CPSD therefore requests that if CVT's motion to withdraw is granted, the applicant or any of its current directors, officers or owners of more than 10% of outstanding shares be required to reference this application, CPSD's protest and the decision granting the motion to withdraw the application in any future applications for authorization to provide telecommunications services in California. CVT did not seek permission to reply to CPSD's response.

Given the relief sought by CVT and the uncontested conditions CPSD seeks to place on the withdrawal of the application, consistent with our rules of practice and procedure, it is more appropriate to treat CVT's motion as seeking dismissal pursuant to Rule 11.2 rather than withdrawal.

Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ in this proceeding.

⁵ If true, these potential violations would make the failure to obtain Commission approval prior to transferring CVT's assets to STi a violation of Pub. Util. Code § 854.

Findings of Fact

1. On November 20, 2008, CVT filed an application for a certificate of public convenience and necessity to provide inter- and intra-local access and transport area services in California as a non-dominant interexchange carrier.
2. The CPSD of the California Public Utilities Commission filed a protest to the CVT application on January 2, 2009.
3. CVT claims to have transferred all of its assets related to the provision of prepaid calling card services, to STi on December 1, 2008.
4. A PHC was held on Wednesday, April 15, 2009; the only appearance made was by the CPSD of the California Public Utilities Commission.
5. On May 12, 2009, CVT filed a Motion to Withdraw A.08-11-022.
6. The Commission's CPSD requested that certain conditions be placed on CVT and/or its principals if CVT is allowed to withdraw A.08-11-022.

Conclusions of Law

1. CVT filed a Motion to Withdraw A.08-11-022 on May 12, 2009, pursuant to Rule 11 of the Commission's Rules of Practice and Procedure.
2. It is appropriate to treat CVT's motion as seeking dismissal pursuant to Rule 11.2 rather than withdrawal under Rule 11 of the Commission's Rules of Practice and Procedure.

O R D E R

IT IS ORDERED that:

1. CVT Prepaid Solutions, Inc.'s application in this proceeding is dismissed.
2. CVT Prepaid Solutions, Inc. and any of its current directors, officers or owners of more than 10% of outstanding shares are required to reference this application, the Commission's Consumer Protection and Safety Division's protest and this Decision in any future applications for authorization to provide telecommunications services in California.
3. Application 08-11-022 is closed.

This order is effective today.

Dated October 15, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners