ALJ/KK3/oma/lil **Date of Issuance 7/21/2011**

Decision 11-07-021 July 14, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Application of Metropolitan Telecommunications of California, Inc. dba MetTel (U6568C) for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-based and Resold Local Exchange Service as a Competitive Local Carrier Within the Citizens Operating Company Territory. | Application 10-05-018 (Filed May 19, 2010) |

# DECISION ADOPTING SETTLEMENT AGREEMENT AND GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LIMITED FACILITIES-BASED AND RESOLD LOCAL EXCHANGE SERVICE

## Summary

This decision adopts the proposed Settlement Agreement[1] attached hereto as Attachment E and grants a registration Certificate of Public Convenience and Necessity to Metropolitan Telecommunications of California, Inc. d/b/a MetTel to provide limited facilities-based and resold local exchange service as a competitive local carrier within California in the territory of Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California. Among other things, the Settlement Agreement

[1] The Settlement Agreement resolves the issues set forth in the only protest filed in this proceeding.

requires Applicant to pay a penalty of $8,000 to the California General Fund and to file an amended application. The amended application was filed. This proceeding is closed.

## Background

On May 19, 2010, Metropolitan Telecommunications of California, Inc. d/b/a MetTel (U6568C) (MetTel or Applicant) applied for a Certificate of Public Convenience (CPCN) and Necessity with the California Public Utilities Commission (Commission) to provide limited facilities-based and resold local exchange service as a competitive local carrier within the territory of Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Frontier).[2] On June 21, 2010, the Consumer Protection and Safety Division (CPSD) protested the application alleging that MetTel's (1) affiliated entity of the same name had been sanctioned by the Federal Communications Commission (FCC) eight times between 2002 and 2008; (2) this affiliation should have been disclosed in the application; (3) Applicant's failure to disclose the sanctions was a violation of Rule 1.1; (4) a Rule 1.1 violation can occur without intent to violate the rule if the Commission or its staff has been mislead by an artifice or false statement of fact or law; and (5) Applicant should be subject to a penalty under California Public Utilities Code (Cal. Pub. Code) §§ 2107 and 2108.

[2] Applicant was previously granted authority to provided limited facilities-based and resold competitive local exchange service within the service territories of AT&T and Verizon in Decision (D.) 01-01-007. Applicant was also granted authority to provide interexchange telecommunications service state wide by D.01-08-029.

With permission of the assigned Administrative Law Judge (ALJ) the parties met and conferred in an attempt to resolve the issues raised by the application, protest and reply. On March 7, 2011, CPSD and Applicant moved for adoption of the Settlement Agreement. The motion and the Settlement Agreement state that Applicant has provided satisfactory explanations concerning CPSD's protest and has agreed to pay a penalty of $8,000 to the General Fund, and the terms of the Settlement Agreement satisfactorily address all of CPSD's concerns. The motion further states that CPSD no longer has concerns regarding Applicant's fitness to provide service in California. The motion requests the Commission adopt the Settlement Agreement and issue a CPCN to Applicant to provide services in California as limited facilities-based and resold services as a competitive local carrier within the Frontier territory.

Other than CPSD's protest, which would be resolved once the Settlement Agreement is adopted by this decision, no other opposition to this Application was filed.

## Settlement Agreement

The Settlement Agreement addresses the issues raised by CPSD's protest. For Applicant's failure to disclose the regulatory history of the affiliated MetTel company. The Settlement Agreement requires that Applicant file an amended application with more complete disclosures and pay an $8,000 fine to the California General Fund. As required by the Settlement Agreement, Applicant filed an amended application on December 23, 2010, which revised and supplemented information relating to FCC proceedings concerning other subsidiaries of Applicant's parent company, Manhattan Telecommunications Corporation.

Applicant explained that during the nine years it has been a certified carrier in California it has not been accused of slamming or been subject to any sanction at the state or federal level, and that its nondisclosure regarding sanctions imposed on an affiliated company was inadvertent. As discussed herein, while these concerns raise questions as to Applicant's overall fitness to provide telephone services in California and commitment to comply with all of the regulatory mandates, the Settlement Agreement satisfactorily resolves those concerns.

## Discussion

Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that, before approving a settlement, the Commission must determine that the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. We find that the Settlement Agreement fully satisfies these requirements and therefore should be approved.

The Settlement Agreement at issue here also includes imposition of a penalty. In determining the appropriate penalty, the parties took into consideration the criteria used by the Commission. Specifically, the parties considered factors previously used by the Commission in setting fines, including but not limited to: (1) severity of the offense, (2) conduct of the utility,[3] and (3) Commission precedent in similar cases.

Here, CPSD indicates that it is satisfied that the Settlement Agreement resolves all of the concerns raised in its protest and that adoption of the

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[3] *Rulemaking to Establish Rules For Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted By the Commission In Decision 97-12-088*, (1998) D.98-12-075 at 71, 1998 Cal. PUC LEXIS 1016.

Settlement Agreement would be in the public interest. We agree. The Settlement Agreement does the following:

1. It shows unequivocal acknowledgement of CPSD's concerns by Applicant, the history of cooperation by Applicant in addressing the issues raised by CPSD during the course of this proceeding, and Applicant's commitment to comply with all regulatory matters going forward;
2. The terms and conditions it imposes upon Applicant allow Applicant to serve California customers. It provides the Commission with necessary assurances that in the future, Applicant will comply with its regulatory obligations. It imposes an $8,000 penalty for the failure to fully disclose information to the Commission during the application process and requires Applicant to file an amended application fully disclosing the FCC violation which preserves the integrity of the application and licensing process of the Commission and provides sufficient deterrence to Applicant (and by example to others similarly situated) from engaging in future violations for which further penalties will be imposed by the Commission; and
3. It saves the Commission the further expense and commitment of resources involved in possible hearings of the questions of the violations set forth in CPSD's protest and the degree of culpability associated with same.

As a result of the Settlement Agreement, the Commission finds that the public will benefit because Applicant has taken measures to rectify a violation of law, and to protect California consumers and the integrity of the Commission's jurisdiction and process. The terms of the Settlement Agreement protect Applicant's customers and members of the public in California by ensuring that Applicant will fully meet its regulatory and legal obligations while allowing Applicant to offer the services contemplated to California consumers. Additionally, the terms of the Settlement Agreement are consistent with other settlement agreements that the Commission has approved based on similar factual situations.

The proposed Settlement Agreement is an all-party settlement as CPSD and Applicant are the only active parties in this proceeding. The settling parties reasonably reflect the affected interests. The Parties have had sufficient opportunity to review and discuss the terms of the Settlement Agreement. All issues raised by the CPSD's protest to the Application have been resolved in the Settlement Agreement. Therefore, the Settlement Agreement is found to be reasonable and in the public interest and should be adopted. Accordingly, we adopt the Settlement Agreement, and Applicant is granted a CPCN consistent with the terms and conditions set forth in the Settlement Agreement.

## Waiver of Comment Period

This decision adopts the Settlement Agreement resolving all of the issues raised by the only protest in this proceeding. This is now an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

## Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

## Findings of Fact

1. Applicant was granted authority to provide limited facilities-based and resold competitive local exchange service in AT&T California and Verizon California Inc. service territory in D.01-01-017.

2. Applicant was granted authority to provide interexchange telecommunications services state wide in D.01-08-029.

3. Applicant requests authority to provide limited facilities-based and resold competitive local exchange service in Citizens territory.

4. Applicant filed an Amended Application on December 23, 2010 which contains the additional information required by the all-party Settlement Agreement.

5. There is currently no opposition to granting this Application, in light of the proposed all-party Settlement Agreement filed in this proceeding.

6. The proposed Settlement Agreement by and between Applicant and CPSD resolves all issues raised by CPSD's protest in this proceeding.

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

## Conclusions of Law

1. The proposed all-party Settlement Agreement filed in this proceeding, including all of its terms and conditions, is reasonable in light of the whole record and consistent with the law, and its adoption would be in the public interest.

2. The proposed all-party Settlement Agreement, attached hereto as Attachment E, should be approved and adopted.

3. Metropolitan Telecommunications of California, Inc. should be granted a CPCN subject to the conditions set forth in the attached Settlement Agreement and attachments.

4. 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. The proposed all-party Settlement Agreement, attached hereto as Attachment E, is adopted.

2. A Certificate of Public Convenience and Necessity is granted to Metropolitan Telecommunications of California, Inc. to limited facilities-based and resold local exchange service in California subject to the conditions set forth herein.

3. Metropolitan Telecommunications of California, Inc. must pay a fine totaling $8,000. As required by Section 2 of the Settlement Agreement, the first payment of $2,000 must be made within 30 days of the effective date of this order. The remaining $6,000 must be paid to the Commission in three monthly installments of $2,000 each. The three installments are due in the three consecutive months after the due date for the initial payment. Metropolitan Telecommunications of California, Inc. will be deemed in default if full payment of the penalty under Section 2 of the Settlement Agreement is not made within five days of each due date. Payment must be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office, at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The words "For deposit to the General Fund per Decision 11-07-021" must be written on the face of the check or money order.

4. The Certificate of Public Convenience and Necessity granted in Ordering Paragraph 2 is effective when the first $2,000 penalty payment required by Section 2 of the Settlement Agreement has been made.

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

6. Metropolitan Telecommunications of California, Inc. is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. Metropolitan Telecommunications of California, Inc. may not offer services until tariffs are on file. Metropolitan Telecommunications of California, Inc.'s initial filing must be made in accordance with General Order 96-B, the Telecommunications Industry Rules. Metropolitan Telecommunications of California, Inc. must comply with its tariffs.

7. Metropolitan Telecommunications of California, Inc. is assigned corporate identification number U6568C which must be included in the caption of all filings made with this Commission.

8. In addition to all the requirements applicable to competitive local exchange carriers included in Attachments B, C, and D to this decision, Metropolitan Telecommunications of California, Inc. is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

9. Metropolitan Telecommunications of California, Inc. must file, in this docket, a written acceptance of the certificate granted it in this proceeding within 30 days of the effective date of this order.

10. Metropolitan Telecommunications of California, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public

Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is $0.

11. Prior to initiating service, Metropolitan Telecommunications of California, Inc. must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes or resolving consumer complaints. This information must be updated at least annually and whenever the name or telephone number changes.

12. Metropolitan Telecommunications of California, Inc. must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

13. Metropolitan Telecommunications of California, Inc. must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis. The report must set forth the information described in Attachment D.

14. Metropolitan Telecommunications of California, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information described in Attachment C to this decision.

15. Metropolitan Telecommunications of California, Inc. is not authorized to construct facilities other than those to be installed in existing buildings and structures.

16. All sealed information will remain sealed for a period of two years after the effective date of this order. After two years, all such information will be made public. If Metropolitan Telecommunications of California, Inc. believes that further protection of sealed information is needed beyond two years,

Metropolitan Telecommunications of California, Inc. may file a motion, no later than 30 days before the expiration of the two-year period granted by this order, stating the justification for further withholding of the sealed information from public inspection.

17. Application 10-05-018 is closed.

This order is effective today.

Dated July 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

**ATTACHMENT A**

List of deficiencies in tariff filed by Metropolitan Telecommunications of California, Inc. in Application 10-05-018 to be corrected in its tariff compliance filing:

No deficiencies noted.

**(END OF ATTACHMENT A)**

**ATTACHMENT B**

**REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS**

1. Applicant must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees, and you must remit them regularly. Per the instructions in Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted, even if the amount due is $0.

   a. The current 1.15% 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-17071, dated March 1, 2007, effective April 1, 2007);

   b. The current 0.20% 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-17127, dated December 20, 2007, effective January 1, 2008);

   c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.18% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;

   d. The current 0.00% 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; Resolution T-17299, dated November 19, 2010, effective December 1, 2010);

e. The current 0.45% 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 California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F; D.07-12-054); Resolution T-17215, dated October 15, 2009, effective December 1, 2009;

f. The current 0.00% 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 Advanced Services Fund (D.07-12-054); Resolution T-17248, dated December 17, 2009, effective January 1, 2010; and

g. The current 0.079% 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-17142, dated April 24, 2008, effective June 1, 2008).

These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, you should check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (d/b/a AT&T California) and apply the current surcharge and fee amounts in that joint tariff on your end-user bills until further revised.

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

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

6. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact

person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

7. Applicant must notify the Director of the Communications Division 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 must 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 must 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 must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. Applicant must file an affiliate transactions report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis with the information contained in Attachment D to this decision.

12. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

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

14. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fees listed in 2 above, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's

Certificate of Public Convenience and Necessity unless it has received written permission from the Communications Division to file or remit late.

15. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure.

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

17. 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.

18. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.

19. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

**ATTACHMENT C**

**ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, 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 Pub. Util. Code §§ 2107 and 2108.

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 Certificate of Public Convenience and Necessity.
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.
12. Cash flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

**(END OF ATTACHMENT C)**

## ATTACHMENT D

## CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction Report.

- Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership);
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (e.g., a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as "controlling corporations" of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

**(END OF ATTACHMENT D)**