

Decision 09-01-017 January 29, 2009

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

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

Application 08-05-028  
(Filed May 21, 2008)

**DECISION DENYING MOTION TO WITHDRAW APPLICATION  
AND GRANTING REGISTRATION**

**1. Summary**

The Commission denies the motions of Skynet Communications, Inc. (Skynet) for leave to withdraw its application for registration as an interexchange carrier (switchless reseller) telephone corporation pursuant to Pub. Util. Code § 1013.<sup>1</sup> The Commission also rejects Skynet's argument that it is not required to register with the Commission pursuant to § 1013 for the reasons that its telephone prepaid debit cards (phonecards) are marketed to the international market, the Commission lacks jurisdiction, and the *de minimus* intrastate revenue Skynet receives is generated by visitors to the state who simply find use of an international phonecard a matter of convenience. Skynet's application for registration is approved.

This proceeding is closed.

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise stated.

## **2. Procedural Summary**

On May 21, 2008, Skynet filed this application pursuant to the registration process adopted in Decision (D.) 97-06-017 and related decisions. On July 18, 2008, the Commission's Consumer Protection and Safety Division (CPSD) filed a protest to the application. On August 22, 2008, Skynet served a document entitled Applicants' Withdrawal of Application. At the request of the Commission's Docket Office, Skynet refiled the document as a motion for leave to withdraw the application. On September 8, 2008, Skynet filed an amended motion for leave to withdraw the application. On September 17, 2008, CPSD filed its opposition to Skynet's motions. With the permission of the assigned Administrative Law Judge (ALJ), on September 25, 2008, Skynet filed a reply to CPSD's opposition to the motions. On October 3, 2008, CPSD filed a response, and this matter was submitted for decision based on the pleadings.

## **3. Background**

In response to data requests submitted by CPSD following filing of the application, Skynet stated that it carried almost exclusively international traffic, very little domestic interstate traffic, and no intrastate traffic. In its first motion for leave to withdraw the application, Skynet stated again that it carries no California intrastate traffic and asserted that the application was improvidently filed because the Commission has no jurisdiction over interstate calls. Later, in its September 8, 2008 amended motion for leave to withdraw the application, Skynet stated that based on data provided by an underlying carrier, it had determined that a small amount of its traffic is intrastate traffic.

### **3.1. Position of Skynet**

Skynet explains that following a review of data provided by its underlying carrier, it learned that a minuscule amount of its traffic (about 1/20 of

1% or .0005) is between points in California. According to Skynet, neither Skynet nor its marketing agents (1) market to any significant degree outside the international market or (2) set rates remotely intended to foster penetration of the California intrastate market. Skynet presumes that the *de minimus* amount of revenue derived from intrastate calls each month (about \$125 out of \$250,000) is generated by visitors to the state who simply find use of an international phonecard a matter of convenience. Skynet says it may be able to block those few calls although to do so will result in some inconvenience and confusion to a card user (who may well not be a resident of the state). Skynet believes it makes little sense to bear the expense of maintaining state certification in California for \$125/month in revenues.

Accordingly, Skynet reaffirms its request to withdraw its application. Skynet believes that, if the issue arose in another context, the Commission would conclude that the receipt of revenues from intrastate calling that are so infinitesimal both in dollars (\$125/month) and as a percentage of traffic (1/20 of 1% or .0005) does not constitute activity governed by § 1001. Skynet argues that such a determination would plainly be one that “bear(s) a reasonable relation to statutory purposes and language,” citing *Southern California Edison v. Peevey*, 31 Cal. 4<sup>th</sup> 786 (2003); *Southern California Edison v. Public Utilities Comm*, 117 Cal. App. 4<sup>th</sup> 1039 (2004); *Greyhound Lines, Inc. v. Public Utilities Comm*, 68 Cal.2d 406, 410-411 (1968).

### **3.2. Position of CPSD**

In its September 17, 2008 response to Skynet’s motions, CPSD argues that withdrawal of the application is inappropriate because: (1) Skynet has

violated Rule 1.1<sup>2</sup> of the Commission's Rules of Practice and Procedure by providing false information to the Commission; and (2) Skynet is operating as a phonecard provider, if not a telecommunications carrier, in California and therefore is required to be registered by this Commission.

Further, CPSD states that the preliminary results of its investigation have established that: (1) Skynet's principal, and probably sole, line of business in California is phonecards; (2) notwithstanding Skynet's disavowal of intrastate service in communications with this Commission, at least some Skynet phonecards are specifically marketed as providing intrastate and other domestic services; and, (3) the Commission Staff was able to make intrastate calls on all but one of 10 Skynet cards tested.

CPSD recommends that Skynet be fined for a Rule 1.1 violation. CPSD points out that although Skynet ultimately corrected the record, it persisted in asserting that it carried no intrastate traffic, when its own distributor's website suggested otherwise.

#### **4. Discussion**

We reject Skynet's contention that it is not required to register with the Commission as a provider of phonecards as required by § 1013. There is no question that Skynet is a provider of phonecards in California. There is no exception to the registration requirement simply because Skynet is a provider of international phonecards and its California intrastate traffic is *de minimus*.

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<sup>2</sup> Rule 1.1 states in relevant part:

Any person who signs a pleading or . . . transacts business with the Commission, by such act . . . agrees to . . . never . . . mislead the Commission or its staff by an artifice or false statement of fact or law.

Sections 885-886 require that all phonecard providers register with this Commission:

- 885. (a) Any entity offering the services of telephone prepaid debit cards is subject to the registration requirements of Section 1013, commencing January 1, 1999, unless that entity is certificated by the commission to provide telephone service . . .
- 886. Entities that are required to register, but have failed to do so, or entities that are denied registration by the commission, shall not offer the services of telephone prepaid debit cards. Entities that are required to register, but have failed to do so, and entities denied registration that offer telephone prepaid debit cards shall be subject to fines or other sanctions that may be ordered by the commission.

Contrary to Skynet's assertions, these statutes are not limited to phonecard providers providing intrastate services, and there is no exclusion for the hypothetical (and unusual) case where a provider of international phonecards would block access to intrastate calling on cards used in California. Section 886 clearly provides that telecommunications providers that do not register or obtain a Certificate of Public Convenience and Necessity (CPCN) with this Commission, "shall not offer the services of telephone prepaid debit cards" in California.

There is no dispute that Skynet is a seller of phonecards in California. Thus, Skynet must be registered with this Commission if it continues to offer telecommunications services via phonecards to California consumers, regardless of whether such sales are made from Internet websites or corner stores, and its failure to do so would constitute an ongoing violation of California law.

We also reject Skynet's argument that its California intrastate revenue is so infinitesimal so as not to constitute an activity governed by § 1001. Skynet's

reliance on § 1001 is misplaced. It is §§ 885, 886, and 1013 that control, and these statutes do not allow for exceptions.

Registration is a necessary first-step in the Commission's ability to combat phonecard fraud, and it is imperative that the Commission preserve the integrity of the Commission's phonecard registration process. Also, the Commission has jurisdiction to adjudicate the appropriateness of charges on a California consumer's bill, even if the underlying services are interstate or international in character.<sup>3</sup> Accordingly, we deny Skynet's motions to withdraw this application because Skynet is currently marketing phonecards within California, and §§ 885, 886, and 1013 require that providers of phonecards be registered with the Commission.

Notwithstanding that Skynet initially provided CPSD with incorrect information, we decline to adopt CPSD's recommendation that a fine be imposed on Skynet for an alleged Rule 1.1 violation. We believe that Skynet made an honest mistake and promptly amended its pleadings as soon as it became aware that intrastate revenue was, in fact, involved in this matter, (although the presence or absence of intrastate revenue is not a determining factor for the § 1013 registration requirement to apply).

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<sup>3</sup> See D.06-03-013 (Consumer Protection Initiative), Conclusion of Law 16. Similarly, the Commission has jurisdiction under Pub. Util. Code § 2890 to adjudicate the appropriateness of charges on a California consumer's bill, even if the underlying services are interstate or international in character. The administration of intercarrier compensation contracts under 47 USC 251-52 also involves the Commission in the adjudication of issues relating to interstate or international traffic. Nothing in the certification or registration statutes, Pub. Util. Code §§ 1000 and 1013, or in the decisions implementing them, limits their reach to intrastate carriers only.

## **5. Registration**

This application was filed pursuant to the registration process adopted in D.97-06-017 and related decisions. Skynet is qualified to use this registration process. Skynet should be granted a CPCN subject to the conditions in the attached appendices.

## **6. 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 Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by the CPSD on January 12, 2008. No reply comments were filed.

CPSD objects to the failure to any fine on Skynet for the what CPSD contends was a series of violations of Rule 1.1 of the Commissions Rules of Practice and Procedure, which sets forth the fundamental ethics rules established by the commission regarding participants in our proceedings. They require, among other things, that parties will "never mislead the Commission or its staff by an artifice or false statement of fact or law."

While Skynet was clearly in error in its initial assertions asserting no intrastate revenue, as the ALJ has noted, in response to CPSD and upon a reexamination of data from its underlying carrier, it determined that a small amount of traffic was intrastate. It advised the Commission of this finding, thus, correcting the error. On the basis of what the ALJ determined to be an inadvertent error, we are not going to find a Rule 1.1 violation in this proceeding.

## **7. Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Skynet is a provider of phonecards doing business in California.
2. Skynet's revenue from California intrastate traffic is *de minimus* compared to its total revenues from other sources.
3. Skynet is qualified for an exemption from tariffing requirements. Skynet also agreed to abide by the consumer protection rules adopted in D.98-08-031, as modified from time to time.

### **Conclusions of Law**

1. The Commission has jurisdiction over intrastate telecommunications service and over prepaid phonecards in California.
2. The Commission has jurisdiction to adjudicate the appropriateness of charges on a California consumer's bill, even if the underlying services are interstate or international in character.
3. Under §§ 885, 886, and 1013, phonecard providers doing business in California, are required to register with the Commission.
4. There are no exceptions to the §§ 885, 886, and 1013 registration requirements for phonecard providers doing business in California.
5. A *de minimus* amount of intrastate revenue derived from phonecard operations does not change registration requirements for phonecard providers doing business in California.
6. Skynet's motions to withdraw its application should be denied because currently Skynet is a provider of phonecards doing business in California and should be registered with the Commission.
7. Skynet should be granted the requested CPCN subject to the conditions in the attached appendices.
8. Skynet should be granted an exemption from the requirement to file tariffs.



**O R D E R**

**IT IS ORDERED** that:

1. The motions of Skynet Communications, Inc. (Skynet), to withdraw its application are denied for the reason that Skynet is a provider of phonecards doing business in California, and under Pub. Util. Code §§ 885, 886, and 1013 is required by law to be registered as a phonecard provider.
2. Skynet's application for registration is granted.
3. A Certificate of Public Convenience and Necessity (CPCN) is granted to Skynet to operate as a switchless reseller of inter-Local Access and Transport Area (LATA) and, to the extent authorized by Decision 94-09-065, intra-LATA telecommunications services offered by communication common carriers in California subject to the conditions set forth in the attached appendices. Skynet is assigned corporate identification number U7102C which shall be included in the caption of all filings made with this Commission.
4. If Skynet decides it is not going to provide interexchange carrier services in California, Skynet may request that this CPCN be cancelled, but it must still be registered as a phonecard provider in California.
5. Applicant is exempt from the requirement to file tariffs subject to the conditions set forth in the attached appendices.
6. Application 08-05-028 is closed.

This order is effective today.

Dated January 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG

TIMOTHY ALAN SIMON  
Commissioners

## APPENDIX A

### NON-DOMINANT INTEREXCHANGE CARRIER REGISTRATION

1. If you requested confidential treatment of the financial portions of your application, it was granted and those materials will remain under seal for one year from the date of the decision. If you wish to continue the seal on those materials beyond the one-year period, you must make a formal request no later than 30 days prior to the expiration of the year explaining the reasons why you believe such extension is necessary.

2. You are 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.

3. Revenues collected for the California Advanced Services Fund (CASF) at the surcharge rate of 0.25% shall be held by the carrier in a memorandum account tracking system and the account will accrue monthly interest on the accumulated balance at the short-term commercial paper rate. Carriers shall continue to hold custody of all the collected CASF surcharge revenues and accumulated interest until the Commission provides further direction on the disposition of these revenues.

- a. The current 1.15% surcharge applicable to all intrastate services except for those excluded by Decision (D.) 94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Public Utilities (PU) Code § 879; Resolution T-17071, 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 (PU Code § 2881; Resolution T-17127 effective January 1, 2008);

- c. The user fee provided in PU Code §§ 431-435, which is 0.18% of gross intrastate revenue for the 2007-2008 fiscal year (Resolution M-4819);
- d. The current 0.13% 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 (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-17128, effective January 1, 2008);
- e. The current 0.25% 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);
- f. The current 0.25% 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 Advances Services Fund (D.07-12-054); 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 (set by Resolution T-17142, 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 (dba SBC California) and apply the current surcharge and fee amounts in that joint tariff on your end user bills until further revised.

- 4. You are exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure.
- 5. You are exempt from PU Code §§ 816-830.
- 6. You are exempt from PU Code § 851 when the transfer or encumbrance serves to secure debt.

7. You shall file a written acceptance of the certificate granted in this proceeding with the Director of the Communications Division.

8. Prior to initiating service, you shall provide the Manager of the Commission's Consumer Affairs Branch with your designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number(s). This information shall be updated if the name or telephone number changes, or at least annually.

9. You shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

10. You shall keep your books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

11. In the event your books and records are required for inspection by the Commission or its staff, you 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 your office.

12. You shall file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis, using the information request form developed by Commission staff and contained in Appendix B. You shall file an annual affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar year basis, using the form developed by the Commission staff and contained in Appendix C.

13. You shall ensure that your employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

14. 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.

15. PU Code § 708 requires public utilities to provide ID badges to all employees with a format specified in that Section, and employees to present that badge when they request entry to customer or subscriber premises. You shall send a letter to the Director of the Communications Division within 60 days of the effective date of this order declaring that you have issued the required badges.

16. If you are 90 days or more late in filing an annual report or in remitting the fees listed above, Communications Division shall prepare for Commission consideration a resolution that revokes your CPCN, unless you have received the written permission of Communications Division to file or remit late.

17. You have requested an exemption from the requirement to file tariffs and have represented to the Commission that you are qualified for such an exemption.

18. Beginning December 6, 2004, you must abide by the Consumer Protection Rules contained in General Order 168.

19. If your company is planning to discontinue service or to file for bankruptcy, you are required to contact the Bankruptcy Coordinator in the Communications Division immediately. Please ask us for instructions in your particular circumstances; our rules are designed to ensure that your telecommunications customers receive adequate notice and are minimally inconvenienced. Your compliance is necessary so that you are not penalized for failure to follow Commission rules.

**(END OF APPENDIX A)**

## **APPENDIX B**

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original hardcopy and a machine readable electronic copy using Microsoft Word or compatible format of the information requested in Attachment B pages 2 and 3 no later than March 31<sup>st</sup> of the year following the calendar year for which the annual report is submitted.

Address your report to:

Director, Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

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

If you have any question concerning this matter, please call (415) 703-2883.



Information Requested of California Interexchange Telephone Utilities.

To be filed with the Director, Communications Division, 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.

1. Exact legal name and U # of 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. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A 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.

**(END OF APPENDIX B)**

## APPENDIX C

### CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility shall 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); and
  - Corporate officers.
2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries listed 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 or 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 tariffed 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 1-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 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 APPENDIX C)**

