

Decision No. R14-0130

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13C-1033T

IN THE MATTER OF ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES AND COMMISSION RULES OF PRACTICE AND PROCEDURE RELATING TO THE FILING OF ANNUAL REPORTS BY COMPETITIVE LOCAL EXCHANGE CARRIERS, EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE PROVIDERS, AND REGISTERED TOLL RESELLERS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REVOKING REGISTRATIONS
PURSUANT TO COMPLAINT**

Mailed Date: February 5, 2014

I. STATEMENT, FINDINGS OF FACT AND CONCLUSIONS

1. On October 3, 2013, the Commission issued a “Formal Complaint and Notice of Hearing” (Complaint). Decision No. C13-1214. Hearing Exhibit 4. That Complaint commenced this proceeding. The Complaint ordered the telecommunications service providers listed in Attachment A (Attachment A Respondents) to the Complaint to appear before the Commission to show cause why certain punitive actions should not be taken against them as a result of their failure to comply with Commission rules relating to the requirement of competitive local exchange carriers, emerging competitive telecommunications service providers, and registered toll resellers to file an annual report with the Commission on or before April 30 of each year for the preceding calendar year. *Id.* The Complaint specifically informs the Attachment A Respondents that their registrations may be revoked.

2. Attachment B to the Complaint identifies the facilities-based carriers that connect the Attachment A Respondents to the public switched network. Hearing Exhibit 4. The relevant facilities-based carriers are identified in Appendix B to this Decision (Appendix B Respondents). The Complaint warns that the Appendix B Respondents may be ordered to disconnect carriers from the public switched network. As a result, the Appendix B Respondents are indispensable parties to this proceeding.

3. On October 18, 2013, Commission trial Staff (Staff) filed its “Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 and Request for Hearing” in this matter, as well as its witness and exhibit lists and exhibits.

4. By Decision No. R13-1441-I, a hearing was scheduled regarding the Complaint for on January 27, 2014 at 1:00 p.m. The same Decision required Staff to serve all Respondents listed in Attachments A and B to the Complaint with the Complaint and the Decision and to file a certificate of service evidencing Staff’s compliance with this order. Decision No. R13-1441-I.

5. At the date, time and location designated, the undersigned Administrative Law Judge (ALJ) convened the hearing. Staff appeared through its legal counsel. None of the Respondents appeared at the hearing. In order to give Respondents a further opportunity to appear, the ALJ recessed the hearing for an additional 15 minutes; no Respondent appeared when the hearing was reconvened.

6. During the course of the hearing, Exhibits 1 through 8 were identified, offered, and admitted into evidence. Staff presented testimony from one witness, Ms. Judith Swinnerton, a rate and financial analyst with the Commission. At the conclusion of the hearing the ALJ took the matter under advisement.

7. The Complaint was served on the Respondents listed on Attachments A and B of the Complaint via first class mail on November 19, 2013.¹ Hearing Exhibit 8. The ALJ finds that service was proper.

8. At the hearing, Staff submitted an updated list of Respondents; the list excludes those providers who filed their annual reports since the commencement of this proceeding. Hearing Exhibit 6. Staff's counsel indicated that Staff seeks only to revoke the registrations of the Respondents included in the updated list, Hearing Exhibit 6. The ALJ construes this as a motion to dismiss the Complaint against any Respondent who was listed in Attachment A to the Complaint that is no longer listed in Hearing Exhibit 6. The ALJ will grant this motion.

9. The remaining Respondents who have failed to file an annual report are listed on Appendix A to this Decision (Appendix A Respondents).² Staff seeks to revoke the registrations of the Appendix A Respondents and for an order requiring the Appendix B Respondents to disconnect the Appendix A Respondents from the public switched network.

¹ The Commission initially attempted to serve Respondents shortly after issuance of the Complaint. However, Staff filed a Motion indicating that it discovered six Respondents were served either at incorrect physical addresses or at email addresses which are not authorized to accept e-filing service. Decision No. R13-1441-I; Hearing Exhibit 5. As a result, the ALJ ordered that all Respondents be re-served and that the deadline to satisfy or answer would be extended to 20 days after the new date of service. *Id.*

² Appendix A lists all the Respondents who are included in Hearing Exhibit 6.

10. The Appendix A Respondents are toll resellers within the State of Colorado; consequently, they are subject to the jurisdiction of the Commission. The Appendix A Respondents are required to file an annual report with the Commission on or before April 30 of each year for the preceding calendar year. § 40-3-110, C.R.S.; Commission Rule 2006(a) of the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2. In accordance with the statute and rule, Appendix A Respondents were required to file an annual report for the calendar year ending December 31, 2012. *Id.*

11. The Commission has put the Appendix A Respondents on notice that their annual reports must be filed on multiple occasions. First, Decision No. C13-0212 in Proceeding No. 13M-0104T ordered the Appendix A Respondents to file their 2012 annual reports by April 30, 2013. Hearing Exhibit 1. The Decision provides instructions on how to file the annual report. The Decision was mailed on February 22, 2013. *Id.*

12. After the filing deadline passed, on August 2, 2013, the Commission's Director sent correspondence to each Appendix A Respondent noting their failure to comply with the Decision No. C13-0212 and the subject filing requirements, referring them to the requirements of § 40-3-110, C.R.S., and 4 CCR 723-2-2006(a). Hearing Exhibit 2.³ The letter warns that failure to file an annual report may result in numerous repercussions, including, among others, revocation of their registrations. *Id.* A sample Complaint was included with the letter to further illustrate the potential negative action against the Appendix A Respondents should they fail to comply. *Id.* The Director's correspondence granted Respondents an additional 30 days to file

³ Hearing Exhibit 2 contains a typo in its subject line, by referencing "delinquent year 2012." However, the body of the letter repeatedly makes clear that the delinquent year is 2013, and that missing report is for the period ending December 31, 2012.

their annual report and advised them that their failure to do so would result in the initiation of this Complaint proceeding. *Id.*

13. Also on August 2, 2013, the Commission's Telecom Section Chief, Lynn Notarianni, sent correspondence to the Appendix B Respondents, the facilities-based carriers that connect the Appendix A Respondents to the public switched network. The correspondence advised of the possible violations, that the Appendix B Respondents would be joined as a necessary party to any formal complaint proceeding initiated, and that the Appendix B Respondents may be ordered to disconnect companies from the public switched network. Hearing Exhibit 3.⁴ With that letter, the Commission also provided a copy of the letter sent to Appendix A Respondents, (Hearing Exhibit 2), including the sample Complaint that was sent to the Appendix A Respondents, a list of the carriers who had not filed their annual report, and list of affected facility-based carriers.⁵ Staff did so to inform the Appendix B Respondents that the Appendix A Respondents were on notice that the Commission may order their disconnection to the public switched network.

14. Because Respondents did not file their annual report, despite a Commission order and several warning letters, the Commission issued the Complaint in this proceeding. The Complaint itself is another reminder to file the annual reports. Indeed, many of the Respondents initially identified in Attachment A to the Complaint did file their annual reports and will not be subject to revocation.

⁴ Hearing Exhibit 3 contains a typo in the letters' subject line, by referencing "delinquent year 2012." It should reference delinquent year 2013. However, the body of the letter repeatedly makes clear that the delinquent year is 2013, and that missing report is for the period ending December 31, 2012.

⁵ Hearing Exhibit 3 includes only one copy of the letter and sample Complaint to illustrate the complete mailing to the Appendix B Respondents. Hearing Exhibit 3, at unnumbered p. 67. The copy does not include all the names and addresses of all Respondents, as that would require duplication of Hearing Exhibit 2, which is 63 pages long.

15. The Appendix A Respondents were ordered to satisfy or answer the Complaint within 20 days of service of the Complaint. Thus, the deadline to answer or satisfy expired on December 9, 2013. *Supra*, ¶ 7. No Appendix A Respondent answered or satisfied the Complaint.

16. Staff witness Ms. Swinnerton testified that following issuance of the Complaint, “several” of the carriers listed in Attachment A to the Complaint filed their respective annual reports, thereby satisfying the filing requirements imposed by § 40-3-110, C.R.S., and Rule 2006(a), 4 CCR 723-2. Ms. Swinnerton testified that the toll resellers listed in Hearing Exhibit 6 have not filed their annual report. The remaining non-compliant toll resellers are: CTI Long Distance, Inc., Global Capacity Group, Inc., Infotelecom LLC, Inmate Communications Corporation, LDC Telecommunications, Inc., and Peak Integrated Networks, Inc. Hearing Exhibit 6.

17. Staff recommended and requested that the registrations of the toll resellers listed in Hearing Exhibit 6 be revoked and that the underlying local exchange service providers be ordered to disconnect these Respondents from the public switched network.⁶

18. Staff carries the burden of proof to show by a preponderance of the evidence that the Appendix A Respondents failed to satisfy the filing requirements imposed by § 40-3-110, C.R.S., and Rule 2006(a), 4 CCR 723-2. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

⁶ Staff did not seek a cease and desist order be issued against the Appendix A Respondents.

19. The ALJ finds that Staff met its burden of proof.

20. The ALJ finds that the evidence establishes that Respondents, CTI Long Distance, Inc., Global Capacity Group, Inc., Infotelecom LLC, Inmate Communications Corporation, LDC Telecommunications, Inc., and Peak Integrated Networks, Inc., received proper notice of the Complaint in this proceeding and of the hearing conducted on January 27, 2014. Staff was the only party to appear and present evidence at the hearing and, as a result, this case will be decided on the basis of that evidence.

21. The responsibility for filing an annual report is on the toll reseller. The ALJ Finds that the evidence demonstrated that the Appendix A Respondents, CTI Long Distance, Inc., Global Capacity Group, Inc., Inmate Communications Corporation, LDC Telecommunications, Inc., and Peak Integrated Networks, Inc., were provided several written notifications of their obligation to file the annual report for the period of January 1, 2012 through December 31, 2012 pursuant to § 40-3-110, C.R.S. and Rule 2006(a), 4 CCR 723-2. *Supra*, ¶¶ 7, 11 and 12. Through those notifications and obligations under the Commission's rules, these Respondents knew or should have known that, although required to do so, they had not complied with the subject reporting requirements.

22. The Appendix A Respondents, CTI Long Distance, Inc., Global Capacity Group, Inc., Infotelecom LLC, Inmate Communications Corporation, LDC Telecommunications, Inc., and Peak Integrated Networks, Inc., received proper notice of the hearing regarding the Complaint. Hearing Exhibit 8. The Appendix A Respondents failed to appear for the hearing as ordered by the Commission and have not shown good cause for that failure. Nor have they shown good cause for their failure to file their annual reports for the period ending December 31, 2012.

23. The ALJ finds that the evidence established that the toll resellers listed in Ordering Paragraph No. 2 and Appendix A to this Decision violated § 40-3-110, C.R.S., and Commission Rule 2006(a), 4 CCR 723-2 by failing to file a 2013 Annual Report for the period ending December 31, 2012 with the Commission, notwithstanding the fact that they were afforded a number of opportunities to do so. As a result, these Respondents' toll reseller registrations should be revoked, as referenced in Appendix A.

24. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

II. ORDER

A. The Commission Orders That:

1. The following carriers are dismissed from this proceeding, with prejudice: dpi-Teleconnect LLC, Grasshopper Group LLC, LDC Group LLC, Leap Frog Telecom LLC, Public Interest Network Services Inc., Telemanagement Systems Inc., and Zippytech Incorporated.

2. The Toll Reseller Registrations owned by the Respondents listed in Appendix A to this Decision, that is, CTI Long Distance Inc., Global Capacity Group Inc., Infotelecom LLC, Inmate Communications Corporation, LDC Telecommunications Inc., and Peak Integrated Networks Inc., are revoked as of the effective date of this Order.

3. Ordering Paragraph No. 2 shall be void and this proceeding shall be dismissed as to any Respondent listed therein that files its 2012 Annual Report before the effective date of this Order.

4. If Ordering Paragraph No. 2 is not rendered void as to any of the Respondents listed therein, the underlying providers listed in Appendix B to this Decision are ordered to disconnect the toll reseller whose registration is revoked by Ordering Paragraph No. 2 from the public switched network as soon as is practicable following the effective date of this Order. The appropriate underlying facilities-based carrier listed in Appendix B shall file an affidavit of disconnection with the Commission by the appropriate underlying facilities-based carrier within 20 days of the disconnection.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director