

Control Number: 38414



Item Number: 4

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DOCKET NO. 38414

**AGREED NOTICE OF VIOLATION
AND SETTLEMENT AGREEMENT
RELATING TO DABNEY/STRAWN
LLC'S d/b/a CYBERTEL'S VIOLATION
OF P.U.C. SUBST. R. 26.34, RELATING
TO TELEPHONE PREPAID CALLING
SERVICES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

FILED
MAY 11 2010
9:02
CLERK

ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C) and PURA¹ §§ 15.023 and 55.253, this Order addresses the Settlement Agreement and Report to Commission (Agreement) between the Public Utility Commission of Texas (Commission) Staff and Dabney/Strawn LLC, d/b/a Cybertel (Cybertel) (collectively, Parties) regarding Commission Staff's investigation of Cybertel for violation of P.U.C. SUBST. R. 26.34, relating to Telephone Prepaid Calling Services. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of \$60,000. Cybertel agreed to pay the recommended administrative penalty. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. On October 2, 2009, Commission Staff, through the Legal Division, issued a letter which provided notice of Commission Staff's investigation regarding noncompliance with P.U.C. SUBST. R. 26.34 to Cybertel. The notice recommended a penalty to be assessed against Cybertel for violations of the Commission's customer protection and service standards concerning Telephone Prepaid Calling Services rules as required by P.U.C. SUBST. R. 26.34.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA).

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2. P.U.C. SUBST. R. 26.34(e)(4) requires that prepaid calling services companies may not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the Commission and any surcharges filed at the Commission, and such rates shall be disclosed at the time of purchase. In the course of the investigation, Commission Staff tested six Prepaid Telephone Calling Cards distributed by Cybertel. None of six cards tested by Commission Staff provided the telecommunications services listed on the card, thus effectively reducing the card value to zero minutes.
3. P.U.C. SUBST. R. 26.34(e)(1) requires telecommunications utilities providing prepaid calling services to define and disclose billing increments in their published tariffs or price list on file with the Commission. Cybertel failed to include local, intralata, and interlata rates and does not have a price list on file with the Commission.
4. P.U.C. SUBST. R. 26.34(e)(7) requires telecommunications utilities providing prepaid calling services to maintain call detail data records for at least two years. Cybertel is unable to provide call detail reports requested by the Commission for cards distributed within the past year.
5. P.U.C. SUBST. R. 26.34(f)(1)(ii) requires telecommunications utilities providing prepaid calling services to disclose the maximum rate per minute for local, intrastate, and interstate calls on the calling card. Cybertel distributed Prepaid Telephone cards that do not disclose either local, intrastate, or interstate rates.
6. P.U.C. SUBST. R. 26.34(i) requires a telecommunications utility providing prepaid calling services to provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week, or electronically voice record customer inquiries or complaints. Cybertel has not consistently maintained a customer service number.
7. Cybertel notified the Commission, by letter dated June 15, 2009, that it would be represented by Christopher Stanley and Associates, P.C. Cybertel subsequently changed

representation to Michael Shirley, Attorney at Law. Mr. Shirley is Cybertel's authorized representative for purposes of resolution of this matter.

8. Cybertel fully cooperated with Commission Staff's investigation and provided responsive information to Commission Staff's requests for information.
9. Cybertel participated in one or more settlement discussions with Commission Staff to resolve this matter.
10. Cybertel acknowledged the violations detailed in this Order.
11. Cybertel acknowledged and verified that it has ceased all Telecommunications Services in Texas and agrees to relinquish its certification as a telecommunications utility as defined in P.U.C. SUBST. R. 26.5(217).
12. Cybertel submitted all Prepaid Calling Cards in its possession to Commission Staff and agreed that Commission Staff should destroy the cards following entry of the final Order in this matter. Cybertel further agreed that it will submit any other Prepaid Calling Cards associated with this investigation that it subsequently finds to Commission Staff for destruction.
13. On July 1, 2010, Commission Staff and Cybertel filed an Agreement resolving the violations detailed in this Order. Commission Staff recommended, and Cybertel agreed to pay, an administrative penalty of \$60,000.
14. Cybertel and Commission Staff are the only parties to this docket.
15. The Parties agree that entering into the Agreement does not represent the establishment of precedent, or consensus on any underlying legal, policy, methodology, or factual underpinning of the agreed result of this docket.

16. Consistent with the Agreement, Cybertel agreed to pay \$60,000 as settlement of the allegations raised in the notice of noncompliance with P.U.C. SUBST. R. 26.34.
17. Consistent with the Agreement, the Parties agreed that payment of the settlement amount shall be in four successive payments.
18. Consistent with the Agreement, the Parties agreed that the first payment shall be \$15,000. This payment shall be due no later than 90 calendar days following the date this Order is signed. Each subsequent payment of \$15,000 shall be due no later than 90 days following the due date of the immediately preceding payment.

II. Conclusions of Law

1. Cybertel is a telecommunications utility as defined in P.U.C. SUBST. R. 26.5(217).
2. The Commission has jurisdiction and authority over Cybertel pursuant to §§ 14.001, 14.002, 15.023, and 55.253 of PURA.
3. Failure to comply with the customer service and protection provisions of P.U.C. SUBST. R. 26.34, relating to prepaid calling services, is a violation over which the Commission has jurisdiction pursuant to § 55.253 of PURA.
4. Cybertel failed to comply with the customer service and protection provisions of P.U.C. SUBST. R. 26.34, including 26.34(e)(1), 26.34(e)(4), 26.34(e)(7), 26.34(f)(1)(ii), and 26.34(i), relating to prepaid calling services.
5. The Agreement, dated and filed in this docket on July 1, 2010, resolves all contested issues of fact and law, and the Commission has authority to approve the Agreement pursuant to P.U.C. PROC. R. 22.246.

6. The penalty agreed to be paid by Cybertel pursuant to the Agreement is just and reasonable under P.U.C. PROC. R. 22.246.
7. P.U.C. PROC. R. 22.246(g)(1)(A), (B), and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.
8. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The Agreement, attached to this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. Cybertel shall pay a total administrative penalty in the amount of \$60,000 to the Commission consistent with the terms set forth in the Agreement and shall comply with all other terms of the Agreement.
3. Cybertel shall provide payment of the administrative penalty in four successive payments. The first payment shall be \$15,000, due no later than 90 calendar days following the date this Order is signed. Each subsequent payment of \$15,000 shall be due no later than 90 days following the due date of the immediately preceding payment.

4. Cybertel shall mail its payments of the monetary penalty to:

Public Utility Commission of Texas
Attn: Accounting Department
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Each check shall reference Docket No. 38414 and shall be made payable to the Public Utility Commission of Texas.

5. Cybertel shall cease all Telecommunications Services in Texas and shall relinquish its certification as a telecommunications utility as defined in P.U.C. SUBST. R. 26.5(217), as voluntarily agreed to pursuant to the Agreement in this matter.
6. Cybertel shall submit all Prepaid Calling Cards in its possession to Commission Staff, as voluntarily agreed to pursuant to the Agreement in this matter, and Commission Staff shall destroy the cards following entry of the final Order in this matter. Cybertel shall further submit any other Prepaid Calling Cards associated with this investigation that it subsequently finds to Commission Staff for destruction.
7. Entry of this Order consistent with the Agreement does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order consistent with the Agreement should not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology that may underlie the Agreement.

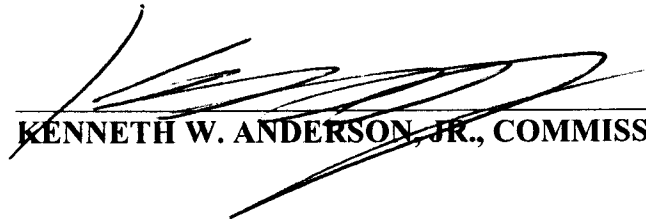
- 8. All other motions, requests for entry of specific findings of facts and conclusions of law, and any other requests for general or special relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the 19th day of August 2010.

PUBLIC UTILITY COMMISSION OF TEXAS


BARRY T. SMITHERMAN, CHAIRMAN


DONNA L. NELSON, COMMISSIONER


KENNETH W. ANDERSON, JR., COMMISSIONER

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO DABNEY/STRAWN §
LLC'S, D/B/A "CYBERTEL" §
VIOLATION OF P.U.C. SUBST. R. §
26.34; RELATING TO TELEPHONE §
PREPAID CALLING SERVICES §
§
§

BEFORE THE PUBLIC UTILITY
COMMISSION OF TEXAS

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Staff) and Dabney/Strawn, LLC, d/b/a "Cybertel," (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of Cybertel for violation of P.U.C. SUBST. R. 26.34 relating to Telephone Prepaid Calling Services.

The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Staff recommends and Cybertel agrees to pay an administrative penalty of Sixty Thousand dollars (\$60,000.00) for Cybertel's violations described in the attached Proposed Order.
3. Unless specifically provided for in this Agreement, Cybertel waives any notice and procedures that might otherwise be authorized or required in this proceeding.
3. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
4. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement, whether those dockets

present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.

5. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.
6. The Signatories agree that this Stipulation shall become effective on the date on which the Final Order or Notice of Approval is issued by the Commission. Upon approval, the Final Order or Notice of Approval, as well as this Stipulation, shall have the same force and effect as any order of the Commission, and any violation of the terms of this Stipulation shall constitute a violation of a Commission order entitling the Commission to exercise any and all rights to seek any and all remedies authorized by law for the enforcement of a Commission order.
7. Cybertel admits the jurisdiction of the Commission for the purposes of this Agreement and the Final Order.
8. Cybertel hereby binds itself to pay, and Staff agrees to accept, an administrative penalty in the amount of Sixty Thousand and No/100 Dollars (\$60,000.00) as complete satisfaction of the recommended monetary penalty for the all of the violations of P.U.C. SUBST. R. 26.34. Payment of the settlement amount shall be in four successive payments. Each payment shall be Fifteen Thousand and No/100 Dollars (\$15,000.00). The first payment shall be due no later than ninety (90) calendar days following the date of an Order of the Commission approving the terms of this Stipulation. Each subsequent

payment of Fifteen Thousand and No/100 Dollars (\$15,000.00) shall be due no later than ninety (90) days following the due date of the immediately preceding payment.

9. Cybertel shall mail its payments of the monetary penalty to:

Public Utility Commission of Texas
Attn: Accounting Department
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Each check shall reference the PUC Docket Number assigned to this matter and shall be made payable to the Public Utility Commission of Texas.

10. Cybertel acknowledges and verifies it has ceased all Telecommunications Services in Texas and agrees to relinquish its certification as a telecommunications utility as defined in P.U.C. SUBST. R. 26.5(217).
11. Cybertel submitted all Prepaid Calling Cards in its possession to Commission Staff and hereby agrees that Commission Staff shall destroy the cards following entry of the Final Order in this matter. Cybertel further agrees that it will submit any other Prepaid Calling Cards associated with this investigation that it subsequently finds to Commission Staff for destruction.
12. This Stipulation constitutes the full and final resolution for the PUC Docket Number assigned to this matter, for Noncompliance with P.U.C. SUBST. R. 26.34.
13. The Signatories agree that any suit arising from this Stipulation shall be brought in Travis County, Texas; provided, however, that no suit shall be brought unless or until appropriate administrative remedies have been exhausted, if applicable.
14. The Signatories mutually agree that they have entered into this Stipulation for their exclusive benefit and the benefit of their respective lawful successors. The Signatories agree that nothing in this Stipulation shall be construed to confer any right, privilege or benefit on any person or entity other than the Signatories and their respective lawful successors.
15. The provisions of this Stipulation are deemed severable and, if a court of competent jurisdiction or other binding authority deems any provision of this Stipulation unenforceable, the remaining provisions shall be valid and enforceable.

16. This Stipulation constitutes the entire understanding and agreement between Staff and Cybertel, and supersedes all other written and oral exchanges or negotiations among them or their representatives with regard to the subject matter contained herein.
17. Each person signing this Stipulation represents that he or she is authorized to sign on behalf of, and to bind, the party represented. Facsimile copies of signatures are valid for purposes of evidencing such execution. This Stipulation may be executed in multiple counterparts, each of which is deemed an original but all of which constitute one and the same instrument.
18. The Signatories agree that this Stipulation is only binding on each Signatory for the purpose of settling the issues herein and for no other purpose. The Signatories acknowledge and agree that a Signatory's support of the resolution of this docket in accordance with this Stipulation may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forum. Because this is a settlement agreement, a signatory is under no obligation to take the same position as set out in this Stipulation in other proceedings not referenced in this Stipulation whether those dockets present the same or a different set of circumstances. The Signatories have entered into this Stipulation in order to amicably settle the issues and to avoid the substantial time, effort, and expense that would be required if these matters were resolved by a hearing on the merits. The Signatories agree that the entry of a Final Order or Notice of Approval based on this Stipulation is agreed to solely for the purposes of facilitating the entry of a Final Order or Notice of Approval by the Commission in this docket and is not to be regarded as a determination of the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principles that may have been employed in reaching the matters agreed to in this Stipulation.

WHEREFORE, this Stipulation has been executed, approved and agreed to by the Signatories hereto in multiple counterparts, each of which shall be deemed an original, on the date indicated below by the Signatories hereto, by and through their duly authorized representatives. The Signatories request that the Commission enter a Final Order or Notice of Approval consistent with this Stipulation.

EXECUTED this 1 of June 2010.

Public Utility Commission of Texas

Dabney/Strawn LLC.,
d/b/a "Cybertel"

Susan M. Stith / 7/1/10
Susan M. Stith
Staff Attorney
Legal & Enforcement Division

Michael Shirley
Michael Shirley
Attorney for Cybertel