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Decision 91-11-048 November 20, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of California)
Real Estate Cellular Service Corporation)
for a Certificate of Public Necessity to)
Operate as a Reseller of Cellular Radio)
Telecommunications Services Within)
California.)

ORIGINAL

Application 91-06-040
(Filed June 20, 1991;
amended September 9, 1991)

OPINION

Summary

This decision grants California Real Estate Cellular Service Corporation (CRECSC) a certificate of public convenience and necessity (CPCN) for authority to resell cellular radio telecommunications services within California. We grant this certificate based on applicant's amended application, filed in response to a protest by Cellular Resellers Association, Inc. The amended application provides for service to the public generally and not, as originally proposed, solely to members of the San Jose Real Estate Board (SJREB), CRECSC's parent corporation.

In granting this application, we specifically reject CRECSC's claim of a right to deny service to any prospective customer with a poor credit history. We also find that the requirement to post a service deposit cannot be based, in whole or in part, on whether the potential customer is a member of SJREB. We direct that tariff language be filed setting forth nondiscriminatory deposit standards.

I. Background

CRECSC is a newly created for-profit subsidiary of SJREB. SJREB has been acting as the master customer for a group of more than 400 "grandfathered" SJREB members receiving cellular

telephone service at wholesale rates from Bay Area Cellular Telephone Company (BACTC) since 1989. In Decision (D.) 89-05-024, we found BACTC had violated Public Utilities (PU) Code § 532 by waiving certain regularly filed rates and charges and ultimately offering wholesale cellular services to individual SJREB members via a group billing arrangement. We ordered BACTC to:

1. Cease and desist from further expansion of services to any additional SJREB members, until the status of wholesale versus retail customers and appropriate rate structures and definitions of those services can be resolved in our ongoing cellular Investigation (I.) 88-11-040; and
2. Bill SJREB for all services heretofore provided in strict accordance with its wholesale tariff schedule.

We also found in D.89-05-024 that SJREB proposed to commence billing a \$60 annual (\$5 per month) service charge to those members who became part of the group of cellular phone users after June 1, 1989. We admonished SJREB to not apply any additional rates or charges to those billed by BACTC without first obtaining a CPCN as a cellular reseller.

This application was filed on June 20, 1991, noticed in the Daily Calendar on June 24, 1991, and protested by Cellular Resellers Association, Inc. (CRA), on July 25, 1991. A prehearing conference (PHC) was held in San Francisco on August 27, 1991. At the PHC, applicant and protestant stated they had reached an agreement providing for the amendment of the application and the withdrawal of the protest. The amendment was proposed to be entered into the record in the form of a stipulation, thereby avoiding a new public notice period. As the amendment was substantive and significantly broadened the application, full notice was required by the assigned administrative law judge (ALJ). The amendment was filed with the Commission on September 9, 1991,

served on all parties to the original service list, and noticed in the Daily Calendar on September 17, 1991.

At the PHC, ALJ Walwyn also directed that supplemental material be filed augmenting the financial and technical information contained in the application. Additional information was required that would demonstrate CRECSC's ability to be a viable entity distinct from SJREB. This material was filed as a compliance filing, Exhibit I, on September 9, 1991 and served on CRA.

II. Issues

A. Nondiscriminatory Service to the Public

Applicant proposes solely to resell cellular services and will not construct, own, or operate any fixed cellular radio equipment or facilities. (CRECSC will primarily provide billing and collection services.) While CRECSC will not sell nor provide cellular telephone equipment, a retail arm of SJREB will sell portable phones. CRECSC will not offer any gifts, discounts or other financial incentives to purchase either cellular equipment or cellular service. (Application, p. 2 and Exhibit I to application, p. 4.)

CRECSC plans to change all "grandfathered" customers of SJREB over to the new corporation within the first two months of operation. Illustrative rates for all customers are as follows:

Service Establishment Charge (max.)	\$25.00
Change in Service Charge (max.)	25.00
Service Restoral Charge (max.)	25.00
Monthly Access Charge (max.)	39.60
Peak Minute Usage (max.)	0.396
Off-Peak Minute Usage (max.)	0.176

An area of the application that contains discriminatory language is in deposit requirements and conditions of service. Applicant initially stated it would set a substantial service

deposit fee for non-resident REALTOR members of SJREB in order to discourage demand for its services from members of the public. (Application, p. 3.) On amendment, applicant again proposes credit and deposit rules to limit public access to services:

"Additional subscribers will apply for service to CRECSC, whose offices will be located in space rented from SJREB. A credit check will be run through a local company using TRANS UNION as a credit report source, and a determination of the level of deposit will be made based on three criteria:

- "1. Prior financial dealings between SJREB and the Applicant (if Applicant has been a member of SJREB);
- "2. Prior financial dealings between Applicant and other professional organizations (if any), and
- "3. The Credit Report.

"CRECSC reserves the right to deny service to applicants with poor credit history. Applicants for service who have demonstrated an excellent credit history will not be required to post a customer service deposit. Non-membership in SJREB or other professional real estate boards will not be a ground for requiring a service deposit."

A fundamental requirement of the rates and charges of a public utility is that they be just, reasonable, and nondiscriminatory. (PU Code §§ 451, 453, and 728.) We do not grant a public utility the right to deny service based on poor credit history nor to set deposit levels based on membership in affiliate organizations. We direct applicant to file tariff language for service deposits that sets forth nondiscriminatory deposit standards. Such rules should contain a maximum deposit level per access number, the length of time the deposit will be held, interest rate, and, if credit history is a criterion, the

requirement to advise the customer in writing of the results of the review of credit history.

B. Adequate Financial and Technical Resources

Exhibit I, filed in response to a request for supplemental data at the PHC, is sufficient to demonstrate the proposed operation is technically and financially feasible.

CRECSC has a loan in place from SJREB of \$100,000 and a commitment to infuse additional resources if needed. Pro-forma operating projections for 1991-93 show the initial capitalization being sufficient and the company operating at a profit by 1992. Company projections are based on switching the existing 400 "grandfathered" customers of SJREB to CRECSC within the first two months of operation and then adding new customers to reach a total of 1,060 subscribers after 14 months and 1,300 subscribers after 26 months.

Applicant will have technical expertise available but caution will need to be taken to document personnel transactions and show arms-length financial dealings between a non-profit membership organization and a for-profit regulated subsidiary serving the public. The exhibit asserts that personnel of SJREB with experience in cellular services billing and collection will be assigned part-time to CRECSC, together with one full-time Cellular Services Coordinator. All personnel will be employees of SJREB and provided to CRECSC under a management services contract providing for cost-based compensation.

III. Conclusion

Applicant has provided adequate information for a grant of authority to provide cellular telecommunications services. Cellular resale markets in California are, by their nature, generally competitive, and we rely to a great extent on market forces to set efficient price levels and restrain competitors from charging unreasonably high prices to customers. We look to a new applicant to demonstrate its proposed operation is technically and financially feasible. We require a new applicant granted a CPCN to file tariffs that specify terms and conditions of service that are just, reasonable, and nondiscriminatory.

As a telephone corporation, applicant is subject to:

1. The fee used to fund the costs of regulating public utilities. (Public Utilities (PU) Code §§ 401-410, 431-435.) Resolution M-4757 (May 22, 1991) set the fee for fiscal year 1991-92 for telephone corporations at one-tenth of 1% (0.1%) of revenue subject to the fee.
2. The surcharge of three-tenths of 1% (0.3%) on gross intrastate revenues used to fund Telecommunications Devices for the Deaf. (PU Code § 2881.) This surcharge became effective July 1, 1989 (Resolution T-13061, April 26, 1989).

Findings of Fact

1. This application was filed on June 20, 1991, served on 36 competing cellular resellers and facilities-based carriers, and noticed in the Daily Calendar on June 24, 1991. A protest was timely filed by Cellular Resellers Association, Inc. and a PHC was held on August 27, 1991. Applicant and protestant entered into an agreement whereby the application was amended and the protest withdrawn. The amended application was renoticed on September 17,

1991 and no timely protests were received. A public hearing is not required.

2. Applicant seeks a CPC&N to operate as a reseller of cellular telecommunications services within California.

3. Applicant proposes to deny service to prospective customers with a poor credit history and to set discriminatory service deposit requirements.

4. The proposed operation is technically and financially feasible.

5. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect on the environment.

6. Public convenience and necessity require the granting of this application.

Conclusions of Law

1. Applicant should be granted a waiver of PU Code §§ 816-830 and 851-855, consistent with D.85-07-081 and D.85-11-044.

2. Applicant is subject to the user fee system, as set forth in PU Code § 401, et seq. The user fee for the 1991-92 fiscal year is 0.1%. (Resolution M-4757, May 22, 1991.)

3. Applicant is subject to a three-tenths of 1% (0.3%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. (PU Code § 2881; Resolution T-13061, April 26, 1989.)

4. Applicant should include in its tariff appropriate rules for imposing fees and surcharges.

5. Applicant should file tariff language for service deposits that sets forth nondiscriminatory deposit standards, as provided in this order.

6. Applicant should not deny service to a potential customer based on poor credit history.

7. Applicant is subject to the provisions of General Order 96-A, as modified by D.88-05-067 and D.90-06-025.

8. The application should be granted.

9. Because the public convenience and necessity require applicant's service, the following order should be effective immediately.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of those rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to California Real Estate Cellular Service Corporation (applicant) to operate as a reseller of cellular telecommunications services in California.

2. Within 20 days of the effective date of this order, applicant shall file a written acceptance of the certificate.

3. Applicant is authorized to file, after the effective date of this order and in compliance with General Order (GO) 96-A, tariffs applicable to its cellular resale services. The tariffs shall become effective on not less than 5 days' notice. The rates and charges shall be as proposed in this application.

4. Applicant shall notify the Director of the Commission Advisory and Compliance Division (CACD) in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.

5. Applicant shall comply with GO 96-A, as revised in D.88-05-067 and D.90-06-025. Applicant shall also comply with the Electronic Serial Number (ESN) blocking tariff rules specified in D.90-06-025.

6. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the format specified by the Chief of the Auditing and Compliance Branch of CACD.

(Appendix A.)

7. Applicant shall comply with PU Code § 401, et seq., and Resolution M-4757, as they pertain to the collection of user fees to fund the costs of regulating public utilities.

8. Applicant shall comply with PU Code § 2881 and Resolution T-13061 as they pertain to a surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf.

9. Applicant shall include in its tariff appropriate rules for imposing and collecting the user fees and surcharges in Ordering Paragraphs 7 and 8.

10. Applicant shall include in its tariff nondiscriminatory rules for service deposits. Such rules shall include a maximum deposit level per access number, the length of time the deposit will be held, interest rate, and, if credit history is a criterion, the requirement to advise the customer in writing of the results of the review of credit history.

11. Applicant shall not deny service to any potential customer based on a poor credit history.

12. The corporate identification number assigned to applicant is U-4109-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. 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.

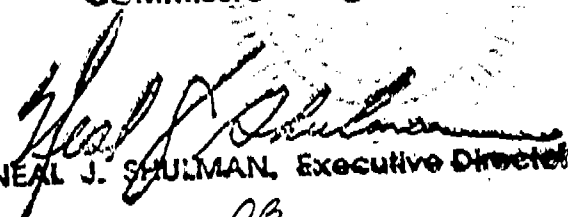
14. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of the Telecommunications Branch of CACD.

15. The application is granted.
This order is effective today.
Dated November 20, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director

PB

APPENDIX A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, 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. 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 A)