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DEC 4 1991

Decision 91-12-002 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cellular Resellers Association, Inc.,  
Complainant,  
v.

Los Angeles Cellular Telephone  
Company (U-4007-C),  
Defendant.

And Related Matters.

ORIGINAL

Case 90-11-053

(Filed November 30, 1990)

Case 90-11-054

(Filed November 30, 1990)

Case 90-12-047

(Filed December 14, 1990)

Peter A. Casciato, Attorney at Law,  
for Cellular Resellers Association,  
Inc., complainant.  
Dinkelspiel, Donovan & Reder, by David M.  
Wilson, Attorney at Law, for Los  
Angeles Cellular Telephone Company,  
defendant.

OPINION

Background

On November 23, 1988, an investigation into the regulation of cellular radiotelephone utilities was opened to determine whether the regulatory framework established in the early cellular certification proceedings is meeting the Commission's cellular objectives.

Pursuant to the investigation, Decision (D.) 90-06-025 and D.90-10-047 were issued which, among other matters, require cellular carriers to implement a large-user tariff at rates 5% above the wholesale rates charged certificated resellers. In addition, the cellular carriers are required to state in their tariffs that the organization or entity receiving volume-user rates

90-11-053  
90-06-025  
serves as the master customer, guarantees payment for all usage by its members, and may not apply any additional charges to its members for such service. In particular, carriers may not bill and collect from individual customers of the volume-user group or organization.

D.90-06-025 also required cellular carriers to include specific consumer protection provisions in their tariffs. These consumer protection provisions include a requirement that the volume-user notify its individual subscribers that the volume-user is not a public utility, that disputes between the volume-user and individual subscribers will not be resolved by the Commission, that cellular service may be discontinued if the volume-user does not pay its bills, and that the volume-user is not permitted to markup services billed by the utility or charge special cellular service fees. These consumer protection provisions apply in those instances when volume services are purchased by noncertificated cellular resellers or carriers.

Complaints

On November 30, 1990, Cellular Resellers Association, Inc. (CRA) filed two complaints against Los Angeles Cellular Telephone Company (LA Cellular) pertaining to volume-user service. CRA is a nonprofit mutual benefit corporation composed of independent cellular telephone service resellers certificated by the Commission.

In the first complaint, Case (C.) 90-11-053, CRA asserted that LA Cellular was providing volume rate cellular service to members of the Orange County Bar Association (OCBA), a nonprofit affinity group, without appropriate tariffs on file with the Commission. A secondary issue in this complaint was the bundling of cellular telephone equipment with cellular service at a substantial discount to OCBA members.

The second complaint, C.90-11-054, asserted that LA Cellular was providing volume rate cellular service to members of the Printing Industry of America, another nonprofit affinity group, again without appropriate tariffs on file with the Commission.

Subsequently, on December 14, 1990, CRA filed a third complaint against LA Cellular. Similar to CRA's two prior complaints against LA Cellular, CRA asserted that LA Cellular was providing volume rate cellular service to nonprofit affinity groups without appropriate tariffs on file with the Commission. The additional nonprofit affinity groups named by CRA were the Southern California Contractors Association, Inc. and the South Bay Independent Physicians Medical Group, Inc.

Pursuant to Rule 55 of the Commission's Rules of Practice and Procedure, Administrative Law Judge (ALJ) Galvin issued a ruling on January 18, 1991 consolidating the three complaint cases. A prehearing conference was set for February 6, 1991.

LA Cellular filed its answer to the complaints on January 22, 1991 denying each of CRA's allegations and asserting that LA Cellular is providing cellular services to nonprofit affinity groups consistent with its existing tariffs.

On April 22, 1991 CRA filed an amendment to its consolidated complaints summarizing its original complaints and naming the Southern California Sanitary Supply Association and the Southern California Contractors Association, Inc. as additional nonprofit affinity groups receiving nontariffed cellular service from LA Cellular.

Hearings

On February 6, 1991 a prehearing conference was held on the consolidated complaints. An evidentiary hearing was scheduled for April 29, 1991. However, at the requests of LA Cellular and CRA the evidentiary hearing was postponed until June 4, 1991 so that the parties could discuss settlement.

At the beginning of the June 4, 1991 evidentiary hearing, LA Cellular and CRA informed the ALJ that they had entered into a stipulated agreement. Accordingly, the evidentiary hearing was postponed and the scheduled hearing time was used to discuss the proposed agreement. Since CRA and LA Cellular are the only parties to this proceeding, this hearing met the requirements of Rule 51.1(b) of the Commission's Rules of Practice and Procedure.

**Settlement Agreement**

CRA explained that the agreement will dispose of all but two issues identified in its complaints. These two issues are whether the end user's name and address may be transmitted to the cellular provider by the master customer of the cellular provider for its use, and whether a third-party billing service may charge master customer end users for billing and handling. As part of the agreement, the parties agreed to litigate these two issues via the briefing process.

In response to an ALJ inquiry, CRA clarified that these unresolved issues are not specifically identified in the complaints it filed against LA Cellular. However, they are sub-issues. CRA explained that the first issue is actually a sub-issue of its dispute on LA Cellular's treatment of the volume-user and volume-users' individual subscribers. Although the second issue is not a part of the complaint, it results from the parties' intent to cover all third-party billing issues.

LA Cellular explained that three steps need to be taken to resolve the complaints before us: first, that the ALJ approve the settlement; second, that a decision on the unresolved issues be made and that LA Cellular and CRA be required to abide by that decision on an interim basis; and third, that LA Cellular and CRA jointly file a petition to modify prior Commission decisions addressing volume-user cellular services.

Both CRA and LA Cellular recognized that the Commission was going to act on a petition to modify D.90-06-025 volume-user cellular service requirements in the near future. Therefore, CRA and LA Cellular agreed to exclude from their agreement the briefing of the unresolved issues in this proceeding. The proceeding was taken off calendar pending the filing of a stipulated agreement between CRA and LA Cellular.

Subsequently, on June 19, 1991 CRA and LA Cellular filed their stipulated agreement, as shown in Appendix A to this order. This agreement provides for CRA and LA Cellular to:

1. Jointly seek modification of Commission decisions pertaining to volume-user cellular services, and to propose guidelines for volume-user cellular services.
2. Address the two unresolved issues in the cellular investigation proceeding with their joint petition to modify prior cellular decisions addressing volume-user services.
3. Extend the facilities-based carriers' prohibition of providing billing and collecting services for the volume-user's individual subscribers to cellular resellers.
4. Allow volume-users to use a nonaffiliated billing and collecting service provided that neither the cellular provider nor the agency charges a fee to individual users for such services.
5. Require the volume-users to be responsible for the payment of all bills for cellular service.
6. Provide a designated contact person to address inquiries from volume-user customers.
7. Apply volume-user deposits and security requirements on a nonpreferential basis.

8. Terminate service to any individual user shown not to be a member, officer, employee, etc. of the volume-user.
9. Prohibit nontariffed referral fees, discounts, and rebates to volume-user customers.

On the same day that the agreement was filed, the Commission issued D.91-06-054 regarding the petition to modify volume-user services. The decision expanded volume-user restrictions imposed on facilities-based carriers to resellers, and allowed facilities-based carriers and resellers to provide billing and collecting services to volume-users' individual subscribers on a direct cost basis.

Conclusion

The agreement between CRA and LA Cellular represents the results of good faith negotiations and compromises to resolve CRA's disputes with LA Cellular without litigation. Subsequent to the filing of their agreement and review of D.91-06-054, CRA and LA Cellular recognized that portions of their agreement contradict D.91-06-054. One such contradiction is their agreement not to charge a fee for billing and collecting services. D.91-06-054 allows a cellular carrier to charge a fee for billing and collecting services.

By a June 24, 1991 letter LA Cellular clarified that CRA and LA Cellular do not, by requesting approval of their agreement, seek to avoid compliance with any applicable Commission decision, regulation, or rules. The parties to the agreement intend to abide by the Cellular Investigation decision, as modified. Therefore, to the extent that the agreement does not conflict with D.91-06-054<sup>1</sup>

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<sup>1</sup> CRA filed an application for rehearing of D.91-06-054 on July 9, 1991. The application for rehearing was denied on October 11, 1991, by D.91-10-025.

the agreement should be adopted. With this condition, the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. (Rule 51.1(e)).

CRA signed the agreement on behalf of its individual members. According to CRA's March 14, 1991 informational filing, the 11 following cellular resellers are members of CRA:

1. Advanced Communications Resources (U-4074-C)
2. California Cellular (U-4034-C)
3. Cellular Service, Inc. (U-4004-C)
4. Cellular Systems International (U-4067-C)
5. Comtech Mobile Telephone Company (U-4024-C)
6. Continental Cellular (U-4066-C)
7. Delta Telecom Mobile Services, Inc. (U-4092-C)
8. Kohyo Telecommunications, Inc. (U-4070-C)
9. Mission Bell Telecommunications Corp. (U-4059-C)
10. Nationwide Cellular Service, Inc. (U-4049-C)
11. Nova Cellular (U-4038-C)

Therefore, to the extent that the terms of the agreement do not conflict with D.91-06-054, this agreement should be applicable to all CRA members.

Findings of Fact

1. CRA filed two separate complaints against LA Cellular on November 30, 1990.

2. CRA filed a third complaint against LA Cellular on December 14, 1990.

3. CRA's three complaints against LA Cellular were consolidated by a January 18, 1991 ALJ ruling.

4. CRA is a nonprofit mutual benefit corporation composed of independent cellular telephone service resellers certified by the Commission.

5. A conference on the proposed stipulation was held on June 4, 1991.

6. CRA and LA Cellular filed a stipulated agreement on June 19, 1991.

7. D.91-06-054, which addresses volume-user cellular service, was issued on the same day that CRA and LA Cellular filed their stipulated agreement.

8. Portions of the stipulated agreement conflict with D.91-06-054.

9. CRA and LA Cellular do not, by requesting approval of their agreement, seek to avoid compliance with any applicable Commission decision, regulation, or rules.

10. CRA signed the agreement on behalf of its cellular utility members.

Conclusions of Law

1. The agreement between CRA and LA Cellular is reasonable in light of the whole record, consistent with law, and in the public interest, and the agreement should be approved to the extent that it does not conflict with D.91-06-054 or subsequent volume-user decisions.

2. This decision should apply only to LA Cellular and to CRA's cellular utility members.

3. Because the agreement resolves the disputes which led to the filing of these consolidated complaint cases, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. The June 19, 1991 stipulated agreement between Cellular Resellers Association, Inc. (CRA) and Los Angeles Cellular Telephone Company (LA Cellular) appended to this decision as Appendix A is approved to the extent that it does not conflict with Decision 91-06-054.

2. CRA's cellular utility members shall conform to the terms of the stipulated agreement, as approved in Ordering Paragraph 1 of this decision.



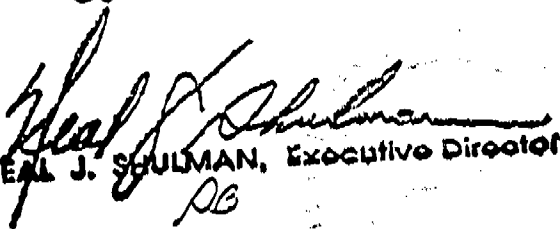
3. Within 15 days of the effective date of this order, CRA shall serve a copy of this decision on each of its cellular utility members and shall notify the Commission Advisory and Compliance Division Director in writing that it has complied with this ordering paragraph.

4. This is a final order and the proceeding is closed.  
This order is effective today.

Dated December 4, 1991, at San Francisco, California.

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

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

  
NEAL J. SHULMAN, Executive Director  
RB

**ORIGINAL**

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**  
PUBLIC UTILITIES COMMISSION

Cellular Resellers Association, Inc.

v.  
Los Angeles Cellular Telephone Co.

JUN 19 1991

SAN FRANCISCO OFFICE  
NO. No. 90-11-053  
And Related Cases

STIPULATED SETTLEMENT OF CELLULAR RESELLERS  
ASSOCIATION, INC. AND LOS ANGELES CELLULAR TELEPHONE CO.

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June 5, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cellular Resellers Association, Inc. )  
 v. )  
 Los Angeles Cellular Telephone Co. ) No. 90-11-053  
 And Related Cases

STIPULATED SETTLEMENT OF CELLULAR RESELLERS  
ASSOCIATION, INC. AND LOS ANGELES CELLULAR TELEPHONE CO.

1. The above-referenced complaints of Cellular Resellers Association, Inc. ("CRA") against Los Angeles Cellular Telephone Company ("L.A. Cellular") will be dismissed upon approval by the presiding Administrative Law Judge ("ALJ") and the California Public Utilities Commission ("Commission") of this Stipulation. Hearings will be taken off calendar upon CRA's and L.A. Cellular's submission to the presiding ALJ of this Stipulation.

2. L.A. Cellular and CRA will jointly draft and submit a Petition to Modify the OII Decisions. Therein, CRA and L.A. Cellular will jointly propose guidelines applicable to all providers of cellular service with regard to the provision of service to "Master Customers" (which term is to be considered synonymous with the term "multiple unit aggregating entity" as used in Dec. 91-01-033) as set forth in Sections A-G below. L.A. Cellular acknowledges and represents that as of the date of execution of this Stipulation, its practices are in conformance with Sections A(1), B(1), E, F(1), & G below, and will instruct its agents that the provisions of Sections A(1) and G are applicable to them. To the extent they are adopted by the Commission, the guidelines described herein will

apply to cellular service providers and their agents in accordance with Section 702 of the PU Code.

3. CRA and L.A. Cellular will file separate briefs on the two issues listed below. Such briefs will be filed in the OII Docket in addition to and concurrently with the joint Petition to Modify the OII Decisions noted above. The two issues are:

(a) whether the end user's name and address may be transmitted to the cellular provider by the Master Customer for the cellular provider's use, including its imprint on the billing detail provided to a third party billing service or Master Customer (as set forth in paragraph A, below); and

(b) whether third party billing services may charge Master Customer end users for billing and handling. In regard to this latter issue, L.A. Cellular will certify how many of its Master Customers, if any, are to its knowledge using such third party services and how such services are being rendered within 30 days of the date of the execution of this Stipulation and will continue to certify same to the presiding ALJ at regular intervals of 30 days until a decision has been rendered in response to the joint Petition to Modify the OII Decisions described in paragraph 2, above. Such continuing certification will include a statement that L.A. Cellular is not advising any of its Master Customers as to the legality of such charges to Master Customer end users.

**A. End User Billing.**

1. The present prohibition by the OII Decisions against direct end user billing and collection by the facilities-based carriers would be extended to include the resellers. Cellular providers may

provide end user billing detail associated with each individual telephone number of the Master Customer but shall not provide pre-printed envelopes to Master Customers for use by their end users for transmittal or payment of bills.

2. Master Customers may use an unaffiliated third-party billing and/or collection service, provided neither the cellular provider nor the Master Customer charges a fee to end users for such services. Unaffiliated shall mean that the billing and/or collection service shall not be owned, controlled or used by a cellular provider or its agents. No third party billing and/or collection service may be subsidized by any cellular provider.

**B. Master Customer Responsibility for Bill Payment and Notice Thereof:**

1. The Master Customer is responsible for and shall pay all bills rendered by the cellular provider in accordance with each cellular provider's tariff in a nonpreferential, nondiscriminatory manner vis-a-vis the conditions imposed upon any other customer of the cellular provider. In other words and by way of example, if late charges are imposed upon a customer for failure to pay its bill within 20 days of the bill's transmittal, then such late charges shall be imposed upon Master Customers in the same manner.

2. All payments of the bill by the Master Customer must be made directly by the Master Customer from its own account and no such payments will be made to the cellular provider by the Master Customer end users.

3. Upon acceptance of this Stipulation by the presiding ALJ, L.A. Cellular, and CRA's members will inform their Master Customers,

by letter, that except as provided herein, cellular providers may not provide (a) individual end user billing and/or collection services; and (b) credit checks for end users. The letter will also reaffirm that the Master Customer is responsible for and shall pay all bills rendered by the cellular provider. In turn, Master Customer shall notify its end users of same.

#### C. Collection from Master Accounts.

Master Customers are responsible for collecting payments from their end users and any bad debt that may be incurred. Cellular providers will not send "dunning notices" or any form of reminder statement directly to Master Customer end users.

#### D. Cellular Provider Customer Services to Master Customers.

All cellular providers shall designate a contact person who shall handle all inquiries from Master Customers regarding issues of service, billing, etc. raised by Master Customer end users. Questions regarding the receipt of bills and payments shall be addressed to the Master Customer.

#### E. Deposits

Deposits and other security requirements for Master Customers must be applied on a nonpreferential, nondiscriminatory basis. If a deposit or other form of security is required, service shall not be provided until the Master Customer pays the depository. Master Customers may collect amounts of deposits from their end users on a pro rata basis but may not impose any surcharges or fees in that

regard. End users may not issue deposit checks directly to cellular providers.

F. Eligible End Users

1. Cellular providers will terminate service to any end user who is shown not to be a member, officer, employee, etc. of the Master Customer.

2. Where Master Customers knowingly permit non-qualified end users to receive service, said Master Customers shall be subject to termination.

G. Referral Program

L.A. Cellular and CRA agree that untariffed referral fees and untariffed discounts or rebates of any kind to Master Customers for the addition of end users to Master Customer Accounts are prohibited.

L.A. Cellular shall reiterate same to its agents, in writing. L.A. Cellular shall state the following to the Commission:

L.A. Cellular and/or its agents have had a referral program which, in some cases, has resulted in payments to Master Customers and to other customers for the referral of new Master Customer end users or new subscribers. That program has been terminated.

L.A. Cellular, CRA, and CRA's members agree to waive any claims either may have relating to referral fees paid in the past.

H. Expedited Resolution of Claims

If L.A. Cellular or any member of CRA is found to have violated (after the date of this Stipulation) the prohibitions noted in paragraphs F(1) and G, above, the alleged offending party will submit to an expedited hearing process at the Commission. Evidence will

be exchanged immediately and disposition of the case will take place as soon as practicable.

CELLULAR RESELLERS ASSOCIATION, INC.

By *Peter A. Casciato*  
Peter A. Casciato  
Its Attorney

CELLULAR RESELLERS ASSOCIATION, INC.

By *David Nelson*  
David Nelson  
Its President

LOS ANGELES CELLULAR TELEPHONE COMPANY

By *Michael Heil*  
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LOS ANGELES CELLULAR TELEPHONE COMPANY

By *David A. Simpson*  
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