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Decision 98-02-105 February 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lightbridge, Inc., AirTouch Cellular, Inc. (U-3001-C), Pacific Bell Mobile Services, Inc. (U-4135-C), Cox Communications PCS, L.P. (U-3064-C), and Sprint PCS, Inc. to Establish an Inter-carrier Credit Check System.

Application 97-04-066
(Filed April 24, 1997;
Supplemented on August 8, 1997)

ORIGINAL

O P I N I O N

Summary

This decision authorizes Lightbridge, Inc. ("Lightbridge"), AirTouch Cellular, Inc., Pacific Bell Mobile Services, Inc., Cox Communications PCS, L.P., and Sprint PCS, Inc. (collectively, the applicants) to share customer credit data for the purpose of determining the creditworthiness of new subscribers in California. This decision also grants the applicants' request that other service providers be authorized to share customer credit data with the applicants by submitting a letter to the Commission's Telecommunications Division. Finally, this decision requires the applicants to comply with specified safeguards designed to protect the privacy of their customers' credit data.

Procedural Background

Application (A.) 97-04-066 was jointly filed by the five applicants on April 24, 1997. Notice of the application appeared in the Commission's Daily Calendar on May 13, 1997. Of the five applicants, Lightbridge is a credit reporting agency located in Massachusetts, while the rest are commercial mobile radio service (CMRS) providers.

A response to the application was filed by CWP Partners (CWP) on June 12, 1997. In its response, CWP asked that the applicants' proposed centralized credit check system be made available to all providers of CMRS and personal communications services (PCS). At the request of CWP, a prehearing conference (PHC) was set for July 21, 1997. However, prior to the PHC, CWP submitted a letter stating that it did not

oppose the application, and that a PHC was no longer necessary. The PHC was subsequently taken off the Commission's Calendar.

AT&T Wireless Services, Inc. (AWS) expressed support for the application in a filing submitted on July 18, 1997. AWS also requested that it receive the same authority granted to the applicants. There was no notice in the Commission's Daily Calendar of the authority sought by AWS.

On August 8, 1997, at the request of assigned Administrative Law Judge (ALJ) Kenney, the applicants submitted supplemental information describing in greater detail their plans for sharing customer credit data.

Summary of the Application

Applicants seek authority pursuant to Public Utilities (PU) Code § 2891(a)(2)¹ to submit customer credit data to a centralized credit check system operated by Lightbridge for the purpose of determining the creditworthiness of new subscribers of CMRS. The applicants also request that other "participating service providers" be granted the same authority in the future by submitting a letter to the Director of the Commission's Telecommunications Division.

Applicants state that the centralized credit check system operated by Lightbridge, known as ProFile, is already used by 20 other carriers operating in 42 states. Applicants describe ProFile as an intercarrier "negative database system" designed to identify high-risk, new-service applicants and to locate customers who failed to make full payment on previous accounts.

If the application is granted, AirTouch Cellular, Pacific Bell Mobile Services, Cox Communications PCS, and Sprint PCS (referred to collectively as the "CMRS Providers") will contract directly with Lightbridge to utilize the ProFile system. The process for using ProFile will begin with the CMRS Providers submitting "negative subscriber data"² to Lightbridge for input into the ProFile database. Each of the CMRS

¹ All statutory references are to the PU Code unless otherwise stated.

² "Negative subscriber data" means write-off and shut-off information pertaining to a subscribers.

Providers will then access the ProFile system to compare applications by new subscribers with ProFile's database of subscribers with a history of write-offs in the industry. If a "match" is found, each CMRS Provider intends to take whatever action it deems appropriate, such as requiring a deposit or denying the request for service.

Applicants identify several benefits that will accrue by granting their application. First, pooling information on subscribers with a history of write-offs will enable the CMRS Providers to reduce the incidence of uncollectible debt and to pass on the resultant savings to their customers. Second, ProFile is a widely used system with economies of scale that can be passed on to California subscribers. Finally, ProFile is a modern system that will speed the provision of service to California subscribers.

After prompting from the ALJ, applicants revealed that they intend to share the CMRS Providers' customer credit data with carriers outside of California. According to applicants, individuals with bad credit are highly mobile, which makes it difficult to identify potential subscribers with a history of bad credit. Applicants state that they can reduce their risk exposure from individuals who are proven credit risks if the CMRS Providers can share their customer credit data on a national scale. Applicants also contend that pooling their customer credit data on a national scale will improve their ability to track "write-off perpetrators" and thereby reduce their bad debt costs.

Applicable Statutes and Commission Precedent

There are several statutes and Commission decisions that have a bearing on this proceeding. The most notable is § 2891, which prohibits telephone corporations from disclosing the following information regarding their residential subscribers: (1) subscribers' personal calling patterns; (2) subscribers' credit or other personal financial information; (3) the services purchased by subscribers; and (4) demographic information about individual residential subscribers. However, § 2891 includes several exceptions to the general rule of nondisclosure. Relative to this proceeding, the most important exception is set forth in § 2891(a)(2), which allows a telephone corporation, when authorized by the Commission, to provide residential subscribers' credit

information to a centralized credit check system for the purpose of determining the creditworthiness of new utility subscribers.

In D.85-03-017, the Commission authorized telephone corporations to release residential subscriber credit information (customer credit data) to a centralized credit check system (CCCS) for the purpose of determining the creditworthiness of new subscribers. In particular, D.85-03-017 ordered the seven largest local exchange carriers (LECs) in California to share information on customers who were known credit risks via a computerized CCCS.³ This decision also ordered the seven LECs and the CCCS vendor to comply with specified safeguards designed to protect customers' privacy.

Also germane to this proceeding is D.93-03-072, in which the Commission denied an application filed by Contel of California, Inc., to expand the membership of the LECs' CCCS to include telephone companies outside of California. The Commission denied the request on the basis that the Commission could not protect the privacy of California subscribers' credit information once the data was used out of state.

Discussion

We find that applicants' request to share customer credit data via the ProFile system to be reasonable since this will serve to reduce the CMRS Providers' costs for uncollectible accounts and thereby protect California consumers who ultimately bear the consequences of write-offs. Accordingly, we will grant applicants' request to share customer credit data so long as the data is used only for the following purposes permitted by § 2891: (1) assessing the creditworthiness of new subscribers; (2) establishing the amount of the deposit that a CMRS Provider may require a new

³ Although D.85-03-017 was issued prior to the enactment of PU Code § 2891 in 1986, the Commission subsequently recognized in Investigation (I.) 90-01-033 that the sharing of customer credit data via the LECs' CCCS was allowed under § 2891(a)(2).

subscriber to pay in order to obtain service; and (3) tracking the whereabouts of "write-off perpetrators."⁴

Conversely, applicants may not use the shared customer credit data as a basis for denial of service. Rather, if a customer's credit history shows a history of write-off's, the CMRS Providers must provide service to the customer if the customer posts a deposit that is reasonably related to the credit risk associated with that customer.⁵

To further protect the privacy of customers' credit data, we will also require the applicants to adhere to following safeguards, most of which were adopted in previous Commission decisions⁶:

1. The CMRS Providers shall not share or disclose any information about their customers that is proscribed by § 2891.
2. Customer credit data provided by the CMRS Providers to Lightbridge shall be used only for the purpose allowed by § 2891(a)(2).
3. The CMRS Providers may only submit to Lightbridge the credit data for customers who have a history of credit problems with one or more of the CMRS Providers. The CMRS Provider shall not submit to Lightbridge any credit data for customers who have no history of credit problems.
4. To protect against unauthorized access to the ProFile system, credit check reports printed from the ProFile system shall not bear the password(s) to access the ProFile system.

⁴ Using customer credit data obtained from a CCCS to assess the creditworthiness of new subscribers is explicitly permitted by § 2891(a)(2). In addition, using customer credit data obtained from a CCCS to set the amount of a deposit that a new subscriber must pay and to track "write-off perpetrators" was first permitted in D.85-03-017 (17 CPUC 2d at 190, 210, 212, and 218 - 220). These latter two uses of customer credit data were later found to comply with § 2891 in I.90-01-033.

⁵ If a subscriber has been disconnected for nonpayment to a particular CMRS Provider, that CMRS Provider may require the subscriber to pay all past due amounts before re-establishing service. Other CMRS Providers may not require a new subscriber to pay past due amounts owed to a previous CMRS Provider as a condition for establishing service, but they may require a deposit that is reasonably related to the credit risk associated with the new subscriber.

⁶ Most of the safeguards adopted by this decision come from D.85-03-017. Additional safeguards come from D.85-05-092, D.93-03-072, and D.96-09-098. Only the first safeguard enumerated in the body of this decision is new.

5. Customer credit data provided by the CMRS Providers to Lightbridge shall remain the property of the CMRS Providers. If a CMRS Provider terminates its contract with Lightbridge, then Lightbridge shall return to the CMRS Provider all the customer credit data in Lightbridge's possession that was obtained from the CMRS Provider.
6. To provide Lightbridge with an economic incentive to enforce the customer privacy safeguards adopted in this decision, the contract between the CMRS Providers and Lightbridge shall provide for termination of the contract if Lightbridge does not safeguard customer privacy as required by this decision. The contract must also require Lightbridge to fully indemnify the CMRS Providers for any damages they pay resulting from claims or lawsuits stemming from a lapse by Lightbridge in complying with the safeguards adopted by this decision.
7. The CMRS Providers and Commission staff shall have reasonable access to Lightbridge's facilities and to the ProFile system for the purpose of monitoring and auditing compliance with the customer privacy safeguards ordered by this decision.
8. The CMRS Providers shall not provide information to Lightbridge that indicates a customer's account is uncollectible, overdue, or that has any other "negative" connotation, if the amount owed is on deposit with the Commission or if a formal complaint covering the amount owed is pending. Once a formal or informal complaint has been resolved with finality and the customer has not paid the balance due after 60 days, the customer's credit data may be entered into the ProFile system.
9. Applicants shall fully comply with state and federal fair credit reporting statutes (e.g., the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.), including the safeguards and rights afforded to consumers by these statutes.
10. For each new customer, and on an annual basis for continuing customers, the CMRS Providers shall provide a written description of how the carrier handles the customer's credit information and a disclosure of the ways that such information might be used or transferred that would not be obvious to the customer.

We expect the applicants to take all measures necessary to protect the privacy of their subscribers' credit data in accordance with both the letter and spirit of this decision. If subscribers' credit data released by the CMRS Providers to Lightbridge is used for any purpose other than that authorized by this decision, we intend to hold the

applicants accountable via the imposition of penalties levied pursuant to Part 1, Chapter 11 of the PU Code and other appropriate remedies.

Although we shall require the CMRS Providers to inform their customers on an annual basis about the sharing of the customers' credit via a CCCS, we do not believe that existing customers should have to wait for up to one year to be informed of this matter. Instead, CMRS Providers should inform their existing customers as soon as possible about our decision today to allow the sharing of customer credit data. To this end, the CMRS Providers shall work with the Commission's Public Advisor to design a bill insert that informs existing subscribers that customer credit data will be shared with other CMRS Providers. The same bill insert should likewise inform customers about the safeguards to protect the privacy of customer credit data that are adopted by this decision. The CMRS Providers shall begin making these bill inserts no later than 45 days from the effective date of this order.

We also find reasonable the applicants' proposal that other CMRS vendors should be granted authority to share their customer credit data via the ProFile system by submitting a letter to the Director of the Commission's Telecommunications Division. However, while we support the efforts by public utilities to reduce their costs for uncollectible accounts, we must also ensure that customers' rights of privacy are protected. Therefore, other CMRS vendors who seek to join the ProFile system must provide both their customers and the public with advance notice of their intent to share customer credit data via the ProFile system. Public notice of such requests would be more likely to reveal any problems that customers might be experiencing concerning the release of their credit data to Lightbridge. We could then grant, conditionally approve, or deny a request to join the ProFile system depending on the content of any protests received in response to the public notice of the request.⁷

⁷ An analogous situation was addressed in D.90-08-032 (37 CPUC 2d 130, at 154.) which required NDIECs desiring to participate in the LECs' CCCS to petition the Commission for authority to do so.

Consistent with the previous discussion, we shall allow other CMRS vendors to obtain authority to share their customer credit data via the ProFile system by submitting a letter to the Director of the Telecommunications Division. Each letter must certify the following:

- (a) That the CMRS vendor submitting the letter will use the shared customer credit data only for the purposes allowed by this decision.
- (b) That both the party filing the letter and Lightbridge will comply with all the customer privacy safeguards adopted by this decision.
- (c) That all of the customers of the CMRS vendor have been informed via a bill insert about: (a) the vendor's forthcoming request to share customer credit data via the ProFile system; and (b) how to submit comments concerning this matter to the Director of the Telecommunications Division.
- (d) That the Public Advisor has reviewed and approved the bill insert.

The Director of the Telecommunications Division shall cause notice of each letter requesting to joining the ProFile system to appear in the Commission's Daily Calendar along with instruction on how to obtain a copy of the letter and how to submit comments on the letter request to the Commission. Each letter request will become effective 30 days after notice of the letter appears in the Commission's Daily Calendar unless the Director of the Telecommunications Division exercises his ministerial authority to reject a letter request for failure to meet or comply with one or more of conditions (a) - (d) listed above.⁶ The Director of the Telecommunications Division shall have authority to require supplemental information for any of the letter requests, and to stay the effective date of a letter request while the supplemental information is pending or under review. The letter requests shall not be used as a vehicle for any party to seek a modification or waiver of any of the customer privacy safeguards ordered by this decision.

⁶ The resolution process should be used to deny letter requests for reasons that require more than the exercise of ministerial discretion.

We shall not grant herein the request by AWS to receive the same authority sought by the applicants. There was no public notice of the AWS request, and, as stated previously, we believe that the public interest is better served if the public receives notice of requests by public utilities to release customer credit data. Instead, AWS may submit a letter to the Director of the Telecommunications Division that asks for authority to share its customer credit data. The Director shall then grant, conditionally approve, or deny the letter request depending on the content of the letter request and any protests received in response to the public notice of the letter request.

Findings of Fact

1. A.97-04-066 was jointly filed by the applicants on April 24, 1997.
2. Notice of A.97-04-066 appeared in the Commission's Daily Calendar on May 13, 1997.
3. Applicants seek authority to share customer credit data for the purpose of determining the creditworthiness of new subscribers.
4. A response to the application was filed by CWP on June 12, 1997. CWP requested that ProFile be made available to all PCS and CMRS providers.
5. At the request of CWP, a PHC was scheduled for July 21, 1997. The PHC was subsequently canceled at the request of CWP.
6. CWP submitted a letter dated July 2, 1997, stating that CWP did not oppose the granting of the application.
7. A hearing is not required.
8. AWS filed a document on July 18, 1997, expressing support for the application and requesting the same authority granted to the applicants.
9. There was no public notice of the authority sought by AWS.
10. Applicants submitted supplemental information on August 8, 1997, which revealed that applicants intended to share their California customer credit data with other entities throughout the nation.

11. Section 2891(a)(2) allows telephone corporations, when ordered by the Commission, to provide residential subscriber credit information to a CCCS for the purpose of determining the creditworthiness of new utility subscribers.

12. In D.85-03-017, the Commission ordered seven LECs to provide residential subscriber credit information to a CCCS for the purpose of determining the creditworthiness of new utility subscribers. This same decision also authorized the LECs to share customer credit data for the purpose of setting the amount of the deposit a new subscriber must pay in order to obtain service, and for tracking the whereabouts of "write-off perpetrators."

13. The CCCS proposed by the applicants will assist the CMRS Providers in reducing their monetary losses from customers with a history of not paying for service received from one or more of the CMRS Providers.

14. In D.85-03-017 and other decisions, the Commission adopted safeguards to protect against the unauthorized release of customer credit information.

15. Public notice of future requests by providers of CMRS to share customer credit data via the ProFile system would help reveal problems that customers may be experiencing concerning the release of their credit data to a CCCS.

16. Allowing other vendors of CMRS to join the ProFile system will assist these vendors in reducing their monetary losses from customers with a history of not paying for CMRS.

Conclusions of Law

1. Applicants' request to share customer credit data via the ProFile data base system should be authorized pursuant to § 2891(a)(2) of the PU Code.

2. Applicants' request to share customer credit data via the ProFile data base system should be granted only to the extent that applicants will use the information to: (a) assess the creditworthiness of new subscribers ; (b) establish the amount of the deposit that a CMRS Provider may require a new subscriber to pay in order to obtain service; and (c) track the whereabouts of "write-off perpetrators."

3. Applicants should be required to comply with the safeguards designed to protect customers' privacy which are enumerated in the body of this decision and in the order that follows.

4. The CMRS Providers should inform their customers as soon as possible about the sharing of customer credit information that is permitted by this decision, and about the safeguards to protect the privacy of customer credit information that are adopted by this decision.

5. Applicants' request to permit other CMRS vendors to share customer credit data via the ProFile system upon the filing of a letter with the Director of the Commission's Telecommunications Division should be granted.

6. Future letter requests by other CMRS vendors for authority to share customer credit data via the ProFile system should certify that: (a) The CMRS vendor submitting the request will use the shared customer credit data only for the purposes allowed in this decision; (b) Both the vendor and Lightbridge will comply with all the customer privacy safeguards adopted by this decision; (c) All of the CMRS vendor's customers have been informed via a bill insert about the vendor's forthcoming request to share customer credit data via the ProFile system, and how to submit comments about this matter to the Director of the Telecommunications Division; and (d) The Public Advisor has reviewed and approved the bill insert.

7. The Director of the Telecommunications Division should cause notice of each letter request for authority to join the ProFile system to appear in the Commission's Daily Calendar along with instructions on how to obtain a copy of the letter and how to submit comments about the letter request to the Commission.

8. The request by AWS that it be granted the same authority as the applicants should be denied.

9. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application (A.) 97-04-066 is granted to the extent it seeks authority for AirTouch Cellular, Inc., Pacific Bell Mobile Services, Inc., Cox Communications PCS, L.P., and Sprint PCS, Inc. (the CMRS Providers), to submit customer credit information to a centralized credit check system operated by Lightbridge, Inc. (Lightbridge) for the following purposes: (a) assessing the creditworthiness of new subscribers in the State of California; (b) establishing the amount of the deposit that a CMRS Provider may require a new subscriber to pay in order to obtain service in California; and (c) tracking the whereabouts in of "write-off perpetrators."

2. A.97-04-066 is denied to the extent it requests authority to share California customer credit data for any purpose other than those authorized in Ordering Paragraph No. 1.

3. A.97-04-066 is granted to the extent it requests that other vendors of commercial mobile radio service (CMRS) be granted the same authority as in Ordering Paragraph No. 1 upon the filing of a letter with the Director of the Commission's Telecommunications Division.

4. The request by AT&T Wireless Services, Inc. (AWS), for the same authority granted to applicants is denied. AWS may request the authority granted herein to applicants by submitting a letter to the Director of the Telecommunications Division that complies with the requirements in Ordering Paragraph No. 8.

5. The CMRS Providers and Lightbridge shall take strict care to protect customer privacy, including complying with the following safeguards:

- a) The CMRS Providers shall not share or disclose any information on their customers that is proscribed by Public Utilities (PU) Code § 2891.
- b) Customer credit data provided by the CMRS Providers to Lightbridge shall only be used for the purpose allowed by PU Code § 2891(a)(2).
- c) The only customer credit data that the CMRS Providers may submit to Lightbridge is data for customers who have a history of credit problems with one or more of the CMRS Providers. The CMRS Providers shall not

submit to Lightbridge any credit data for customers who have no history of credit problems.

- d) Credit check reports printed from the ProFile system shall not bear the password(s) to access the ProFile system.
- e) Customer credit data provided by the CMRS Providers to Lightbridge shall remain the property of the CMRS Providers. If a CMRS Provider terminates its contract with Lightbridge, then Lightbridge shall return to the CMRS Provider all customer credit data in Lightbridge's possession that was obtained from the CMRS Provider.
- f) The contract between the CMRS Providers and Lightbridge shall provide for termination of the contract if Lightbridge does not safeguard customer privacy as required by this order. The contract must also require Lightbridge to fully indemnify the CMRS Providers for any damages they pay from claims or lawsuits stemming from a failure by Lightbridge to comply with the safeguards adopted by this order.
- g) The CMRS Providers and our staff shall have reasonable access to Lightbridge's facilities and to the ProFile system for the purpose of monitoring and auditing compliance with the customer privacy safeguards ordered by this decision.
- h) The CMRS Providers shall not provide information to Lightbridge that indicates a customer's account is uncollectible or overdue if the amount owed is on deposit with the Commission or if a formal complaint covering the amount owed is pending. Once a formal or informal complaint has been resolved with finality and the customer has not paid the balance due after 60 days, the customer's credit data can be entered into the ProFile system.
- i) Applicants shall fully comply with state and federal fair credit reporting statutes, including the safeguards and rights afforded to consumers by these statutes.
- j) For each new customer, and on an annual basis for continuing customers, each of the CMRS Providers shall provide, in writing, a description of how the carrier handles the customer's credit information and a disclosure of the ways that such information might be used or transferred that would not be obvious to the customer.

7. Beginning 45 days from the effective date of this order, the CMRS Providers shall use bill inserts that have been reviewed and approved by the Commission's Public Advisor to inform their customers about: (a) the sharing of customers' credit information that is permitted by this order; and (b) the safeguards to protect the privacy of customers' credit information that are adopted by this order.

8. Other CMRS vendors may submit letters to the Director of the Telecommunications Division requesting authority to furnish customer credit data to Lightbridge and to utilize the ProFile system. Each such letter must certify that: (a) The CMRS vendor submitting the request will use the shared customer credit data only for the purposes allowed by this order; (b) Both the vendor and Lightbridge will comply with all the customer privacy safeguards adopted by this order; (c) All of the CMRS vendor's customers have been informed via a bill insert about the vendor's forthcoming request to share customer credit data via the ProFile system, and how to submit comments about this matter to the Director of the Telecommunications Division; and (d) The Public Advisor has reviewed and approved the bill insert.

9. The Director of the Telecommunications Division shall cause notice of each letter request for authority to share customer credit data via the ProFile system to appear in the Commission's Daily Calendar along with instructions on how to obtain a copy of the letter request and how to submit comments about the letter request to the Commission.

10. Letter requests for authority to share customer credit data via the ProFile system will become effective 30 days after notice of the letter appears in the Commission's Daily Calendar, unless the Director of the Telecommunications Division takes formal action to reject a letter for failure to meet or comply with conditions (a) through (d) in Ordering Paragraph No. 8. The Director of the Telecommunications Division shall have authority to require supplemental information for any of the letter requests, and to stay the effective date of a letter request while the supplemental information is pending or under review. The letter requests shall not be used to seek a modification or waiver of any of the customer privacy safeguards required by this order.

A.97-04-066 ALJ/TIM/gab*

11. Within 30 days from the date of this order, applicants shall submit a letter to the Director of the Telecommunications Division stating whether or not they intend to exercise the limited authority granted herein.

12. Application 97-04-066 is closed.

This order is effective today.

Dated February 19, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners