

ALJ/KLM/gab

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Decision 98-04-014 April 9, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Comtech Mobile Telephone Co. (U-4024-C)
& (U-5254-C),

Complainant,

vs.

Sprint (U-5112-C),

Defendant.

ORIGINAL

Case 96-05-015
(Filed May 8, 1996)

OPINION

Summary

This decision grants the motion of Comtech Mobile Telephone Company (Comtech) for dismissal of its complaint against Sprint Communications Company L.P. (Sprint).

Background

Comtech filed this complaint against Sprint on May 8, 1996, and amended the complaint on October 3, 1996. Comtech is a reseller of cellular services taking wholesale service from Sprint during the period in question. Comtech's complaint alleges that Sprint failed to credit Comtech's account for about \$65,000 in fraudulent calls over which Comtech had no control. The complaint alleges that Sprint's refusal to credit Comtech's account for such calls represents violations of §§ 453 and 532 of the Public Utilities Code because Sprint is not authorized to collect for fraudulent calls and because Sprint does not treat all resellers alike in this respect.

Sprint's answer conceded that it charged Comtech for fraudulent calls but observed that Sprint absorbed the costs of those calls until October 31, 1995. It ceased crediting Comtech's account for such calls after that date and after having notified Comtech on two occasions that resellers are liable for cellular call fraud pursuant to Sprint's tariffs.

Consistent with Rule 10 of Sprint's tariffs, Comtech deposited disputed amounts with the Commission pending the resolution of this complaint and in order to continue receiving service from Sprint during the interim period.

The Commission scheduled hearings in this complaint case for January 30, 1997. On January 21, 1997, Comtech filed a "Withdrawal of Complaint Without Prejudice." The pleading sought receipt of the amounts Comtech had deposited with the Commission, plus interest. Sprint subsequently filed in opposition to the withdrawal of the complaint unless the disputed funds were submitted to Sprint. Sprint argued that Comtech had received service during the pendency of the complaint and that its withdrawal and claim to the funds represented an abuse of the Commission's process.

The Commission's meeting agenda dated December 3, 1997, included a proposed decision and an alternate proposed decision, both granting Comtech's motion with certain conditions. The Commission withdrew the proposed decisions from the agenda at the request of the assigned Commissioner for the purpose of adducing additional evidence.

Subsequently on March 9, 1998, Sprint filed a motion to withdraw its opposition to Comtech's motion to dismiss. Sprint's motion states that it does not object to Comtech's request to disburse to Comtech funds on deposit with the Commission pursuant to an agreement reached between Sprint and Comtech.

At the request of complainant, and no opposition from defendant, we herein grant Comtech's motion for dismissal.

Findings of Fact

1. Comtech, a reseller of telecommunications services and at one time wholesale customer of Sprint, filed this complaint against Sprint and, prior to prosecuting the complaint, filed a request for its dismissal.

2. Sprint originally opposed the dismissal unless the disputed funds deposited with the Commission were disbursed to it, but subsequently withdrew its opposition on March 9, 1998.

Conclusion of Law

The Commission should grant Comtech's request for a dismissal of its complaint against Sprint.

O R D E R

IT IS ORDERED that:

1. The request of Comtech Mobile Telephone Company (Comtech) for a dismissal of its complaint against Sprint Communications Company L.P. is granted.

2. The Commission's Cashier Office shall release to Comtech all sums held on deposit with regard to this proceeding.

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3. Case 96-05-015 is closed.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

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