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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the)
Commission's own motion and Order)
whether Guy W. Martens, dba)
Western Cellular, Inc., has violated)
consumer protection laws and should be)
subject to sanctions or the imposition)
of operating requirements to advance)
consumer protection.)

(U-4182-C))
_____)

FILED
PUBLIC UTILITIES COMMISSION
APRIL 9, 1997
SAN FRANCISCO OFFICE
1.97-04-014

ORIGINAL

ORDER INSTITUTING INVESTIGATION

On June 21, 1996, Western Cellular, Inc., through corporate officers Guy W. Martens and Robert A. McGrath, Jr., wrote to the Commission's Advisory and Compliance Division (CACD), asking for a corporate Wireless Identification Number (WIN). On June 25, 1996, the Commission issued number U-4182-C to Western Cellular. On August 29, CACD received a call from a company retained to promote Western Cellular, Inc.'s offerings, Azimuth Online Services, saying that Guy W. Martens seemed to be the actual principal or manager of Western Cellular, Inc. and that the entity had been operating fraudulently not providing consumers the service they were charged for.

Subsequent investigation by our Consumer Services Division (CSD, then known as Safety & Enforcement Division), in cooperation with CACD,

revealed that Western cellular had no actual address in California¹ but was operating entirely from Nevada. The investigation also revealed that, although given a WIN, Western Cellular apparently has no authority from the Federal Communications Commission (FCC) and no cellular facilities in California. Further, CSD reports that its investigator's visit to Western Cellular's one-room headquarters in Reno found no office equipment other than a telephone and an electronic credit card processing machine. According to CSD, Martens knelt or sat on the floor to take phone orders from customers for service and electronically charge their credit card accounts.

CSD alleges that Martens has used his WIN, and the aura of legitimacy it can lend to anyone promoting wireless service, to help victimize people in two ways. First, staff says that he apparently induced investors to give him thousands of dollars, and apparently issued them worthless stock certificates. Second, and central to this proceeding, the respondents advertised and induced sales representatives to get consumers to call in order to sign up for cellular "services." According to CSD, when a prospective customer called, the respondents promised the consumer a new cell phone, saying that service itself wouldn't be provided for a week or two, but that no charge would be made to the credit card until after service began. Taking the card number from the caller, the respondents then charged the customer's credit card \$450-\$650, but never sent the promised phone or provided the promised service. On occasion, they charged

¹ According to staff, the Sacramento address given in the June 21 letter belonged to an acquaintance of Guy Martens, Billy Rowland, who told staff's investigator that he had given Martens permission to use his address as a mail drop, but was never told about Western Cellular or that Martens planned to use his address to get a WIN.

more than \$450 and allegedly may have repeated the charges in subsequent months.

If these allegations are true, the WIN issued by the Commission is essentially being used to aid in a business "front" to facilitate the theft of money from consumers, and we cannot allow this harm to consumers to continue.

Under 47 U.S.C. section 322 (c)(3)(A), we have been preempted on authority to regulate the rates of commercial mobile service providers. However, we retain over these utilities jurisdiction on the terms and conditions of service which facilitate consumer protection, and can, when there are serious violations of basic consumer protection requirements, cancel a registration and prevent continued California operations.

It is clear that 47 U.S.C. section 332 (c)(3)(A) authorizes us to regulate "other terms and conditions" of service. House Report No.103-111 clarifies that this phrase "intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters" Given this clear statement of intent, it is our practice to notify applicants for WINs that they are subject to our jurisdiction for the resolution of customer complaints and to ensure that they abide by applicable consumer protection rules and laws. The June 25 letter from CACD granting the WIN contains such a notification. For these reasons, we believe we have the authority to order reparations or restitution from Western to all California customers if it has defrauded them. We can also impose sanctions for violating Public Utilities Code Section 451 (charging for services not provided), or other statutory provisions, and impose for good cause operating terms and conditions on the respondents to protect consumers. This would include authority to cancel a registration and prohibit further California operations, and to impose special operating

requirements on such an entity or individuals if they ever seek re-registration and are granted it.

IT IS ORDERED that:

1. Guy W. Martens and Robert A. McGrath, Jr., individuals, and Western Cellular, Inc., are hereby made respondents to this investigation into their operations and practices in connection with obtaining and operating under Wireless Identification Number U-4182-C to market service to the public.

2. Should respondents fail to appear at the specified hearing date, Wireless Identification Number U-4182-C may nevertheless be subject to cancellation and orders could be entered to require compliance with specific marketing plans which will protect consumers, or to prohibit further California operations.

3. Respondents are hereby ordered to cease and desist any and all use of WIN U-4182-C in the advancement of fraudulent marketing, and any use which is illegal under the laws of California.

4. If it is demonstrated that the respondents violated any orders or rules of the Commission or provisions of the Public Utilities Code, or submitted false information to obtain a WIN, sanctions may be imposed under P.U. Code Section 2107 and the registration may be canceled and further California operations prohibited if those measures are necessary to protect consumers.

5. The Executive Director shall cause personal service of this order on at least one of the named respondent officers of Western Cellular, Inc., and shall also serve it on the corporate respondent by certified mail at the last address officially on record at the Commission for WIN U-4182-C. If personal service cannot be made on an individual respondent, the staff shall explain in a declaration the effort made. If the assigned Administrative Law Judge finds, despite personal

service not having been made, that there is reasonable cause to believe that they know of this proceeding, orders can be entered on the merits.

This order is effective today.

Dated April 9, 1997, 1997, at San Francisco, California.

P. GREGORY CONLON
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

I dissent.

/s/ JESSIE J. KNIGHT, JR.
Commissioner