

APR 22 99

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
SAN FRANCISCO OFFICEInvestigation into Accutel Communications,
Inc., d.b.a. Florida Accutel Communications,
Inc.(U-5865-C),

respondent.

I. 99 04 023

ORDER INSTITUTING INVESTIGATION**I. INTRODUCTION**

This Order Instituting Investigation (OII) involves the operations and practices of Accutel Communications, Inc. (U-5865-C), a switchless, non-dominant telecommunications service reseller (reseller). (Hereinafter collectively referred to as "Accutel" and/or "Respondent.") The Consumer Services Division (CSD) has investigated the conduct of Respondent and more than 800 consumer complaints alleging cramming and/or slamming by Respondent. Cramming is the illegal practice of adding charges for products or services to a consumer's monthly telephone bill, which the consumer neither purchased nor authorized. See Cal. Public Utilities Code sections (PUC secs.) 451 and 2890. Slamming is the switching of a consumer's presubscribed long distance telephone carrier to another carrier, without the knowing consent of the consumer. See PUC sec. 2889.5. CSD also examined Respondent's compliance with Commission rules and regulations governing resellers. See D.97-09-086, Appendix A.

II. BACKGROUND

Accutel is a closely-held, Florida corporation with only two corporate

directors, officers, and/or shareholders: Arne Soreide, Chief Executive Officer, and Lynne Soreide, President. CSD has learned that the company currently has twenty-six employees including Donna Kim, President of Operations, all of whom are essentially leased from a Florida business, Staff Leasing.

On August 6, 1997, the California Secretary of State authorized Accutel to do business in California as a registered foreign corporation. On August 15, 1997, Accutel applied (A97-08-028) for a Certificate of Public Convenience and Necessity (CPCN) to resell intra- and inter-LATA telephone services in California as a switchless reseller. On September 19, 1997, the Commission granted Accutel a CPCN and utility identification number U-5865-C. According to their data request responses, Respondent currently has 13,000 or more presubscribed California customers.

Pursuant to General Order (G.O.) 96-A, Respondent filed its Tariff Schedules on February 27, 1998, which became effective the next day. Respondent's Tariff Sheets 7-T through 10-T provide that Accutel subscribers are billed a monthly recurring service surcharge of \$4.95 for certain offered services (e.g., "switched outbound service"). Based on CSD's recent review, the only change to these Tariff Schedules occurred on March 18, 1998, when Respondent filed a "Tariff Checking Sheet." The respondent did not include in its Tariff Schedules any Federal Communications Commission (FCC) tariffs governing the resale of interstate telephone services in California.

III. CSD'S ALLEGATIONS

Following is a summary of allegations which the CSD believes it can prove at a hearing.

For the period June through December 1998, CSD's Consumer Affairs Branch (CAB) received approximately 182 consumer complaints about Accutel. California consumers who had never selected Accutel as their telephone carrier, suddenly found Accutel was billing them a monthly recurring service charge of

\$4.95, as well as for intrastate toll and interstate long-distance calls. For the same time period, Pacific Bell logged approximately 700 cramming and/or slamming complaints against Accutel. Although some consumers were switched-back to their prior presubscribed telephone provider after complaining to CAB or PacBell, many of them were again subsequently crammed by the Respondent and again billed for a recurring monthly charge.

Accutel informed CSD that it believed that Telecommunication Service Centers, Inc. (TSC), is responsible for the cramming that occurred in 1998. From November 1997 to May 15, 1998, TSC was hired by Accutel to rate and bill calls made by Accutel's customers through a facilities-based carrier(s) contracted for by Respondent. At the outset of this arrangement, Accutel turned over to TSC its customer lists and databases, claiming now that it apparently did not retain any copy for itself.

After processing Accutel's customer call data, TSC would send the billing records to OAN, Inc. (OAN), a billing aggregator. Acting on behalf of Accutel, OAN would in turn electronically transfer this billing data to PacBell, GTE, and other local exchange carriers (LECs), for inclusion in the LECs' monthly telephone billing statements sent to its customers. These billing statements would show that OAN is billing on behalf of Accutel, provide OAN's 800 telephone number (but no telephone number for Accutel), set forth a \$4.95 monthly recurring service charge, and itemize any intra- and inter-state toll calls made by the consumer.

On May 21, 1998, Accutel terminated its contract with TSC. However, it was not until June 11, when Accutel changed its password access to OAN's bulletin board, that TSC was prevented from sending OAN any more Accutel billing records. In September 1998, Accutel also told CSD staff that it had "credited" and made whole everyone who was erroneously billed and had complained to the company.

Inconsistently, however, PacBell and CAB records reported that most of Accutel's cramming or slamming occurred after June 1998 and that complaints from consumers are continuing to the present. Despite repeated CSD data requests, Accutel provided few, if any, records of the individuals or businesses crammed or slammed; data showing the number or identity of the consumers affected; or information about the date or amount of credits given. CSD is still awaiting this information to confirm that all consumers owed restitution receive it.

A. Cramming

Cramming violates PUC sec. 451, which requires any public utility's charges for products or services to be "just and reasonable" and presumes for a charge to be reasonable that the consumer authorized or ordered the services billed for. Effective January 1, 1999, PUC sec. 2890(b) prescribes additional consumer protections against cramming. Pursuant to that section, an LEC such as PacBell may only include Accutel's billings (e.g., the \$4.95 monthly recurring service charge) in the LEC's monthly telephone billings to the LEC customers, if both Accutel and OAN provide with their charges *inter alia* the following information required by PUC sec. 2890(e)(2)(A)-(D): (1) a clear and concise description of the amount and the services charged for; (2) information about dispute resolution procedures available to the billed consumer; (3) the name, address, and telephone number of the person or corporation responsible for the charge; and (4) a toll-free telephone number for consumers' use to inquire about and/or dispute any unauthorized charges.

Based on consumer complaints, CSD interviews, and review of consumer telephone billing statements, CSD alleges that Accutel billed California consumers a monthly recurring service charge of \$4.95, as well as toll charges for intrastate and interstate calls without authorization. Further, CSD alleges Accutel failed to comply with the disclosure and other requirements of PUC sec. 2890(e)(2)(A)-(D). For example, CSD found that many consumers complained

that their telephone billing statements contained no toll free 800-telephone number for Accutel. Customers had to obtain the number by calling Accutel's billing agent, OAN, whose 800 telephone number was printed on the statement. When some consumers did reach Accutel, they were met with a taped recording, but received no return call after leaving a message. Other consumers managed to speak with an Accutel employee and were promised that the cramming would stop, but it nevertheless continued.

CSD interviews confirm that Accutel has credited some complainants, and on March 4, 1999, Accutel gave CSD a list of 370 individuals or businesses that Accutel allegedly credited in 1998 and early 1999. CSD has repeatedly requested data from Accutel verifying the scope of Accutel's cramming (e.g., names, address, telephone number of persons crammed) and whether all California consumers who were crammed, received appropriate restitution. Accutel has not provided CSD this information.

CSD alleges, moreover, that other information it has obtained contradict Accutel's purported cramming figure of only 370 cramming victims. PacBell reports show that much of Accutel's cramming occurred after June 1998, when Accutel purportedly stopped TSC from sending OAN any more billing records. Further, CSD alleges that OAN data, suggests a range of 200,000 to 400,000 instances of cramming from January through September 1998, and 9,000 or more such incidences from October 1998 through March 1999. CSD asserts that each month that a consumer is billed through an LEC for a service charge which was not authorized, a separate count of cramming is committed. Also, CSD alleges that CAB's, PacBell's, and OAN's data refute Accutel's explanation that TSC is responsible for its cramming or that some cramming occurred residually after June 1998 due to lags in billing cycles. CSD alleges that the data shows instead that Accutel's misconduct is intentional, extensive, and continuing.

B. Slamming

PUC sec. 2889.5 requires that a residential subscriber's authorization to switch from a presubscribed long-distance telephone carrier to another, must be verified by an independent third party. In addition, the reseller effecting the switch must provide the subscriber with written notice of such a change.

For nonresidential lines, verification of the subscriber's consent to switch may be by one of four means: (1) third party verification; (2) via delivery of an information package that includes a mailer by which the subscriber cancels or affirms the switch; (3) by the subscriber's signature on a written document explaining the nature and extent of the switching; or (4) by electronic means that record the subscribers consent to switch. PUC sec. 2889.5(a)(5).

As of January 1, 1999, any reseller failing to verify as legally required, is liable to the subscriber's previously selected telephone carrier for all charges paid by the subscriber after the illegal switch. PUC sec. 2889.5(e). Moreover, the reseller must credit the subscriber in an amount that corresponds to the difference between the rate resulting from the illegal switch and what the subscriber's previously selected telephone company would have charged. PUC sec. 2889.5(f)

CSD alleges Respondent engaged in repeated slamming of California consumers. In many cases, where Accutel unlawfully charged consumers a monthly service charge, their telephone bills also indicate Accutel as the consumers' primary presubscribed intrastate toll and interstate long-distance provider. For example, the consumers' toll or long-distance call charges would be listed under Accutel and no other reseller or interexchange carrier. Consistently complainants have denied any knowledge of or consent to such a switch.

In August 1998, Accutel informed CSD that it used a third-party verification company located in the Midwest, but most, if not all, complainants have stated to CSD that they received no third-party verification of their purported

“authorization” to switch carrier. Unless Accutel can specifically refute CSD’s data, Accutel is responsible for making consumers whole.

C. Tariffing, Notice, and Recordkeeping Obligations

When the Commission granted Accutel a CPCN operating license, that same decision listed Accutel’s obligations as a reseller. Among them, if Accutel sells interstate telephone services in California, it must include its FCC-approved tariffs as part of its California tariff schedules and provide notice thereof. *See D.97-09-086*, mimeo, at App. A, p. 2, para. 7(b). Pursuant to G.O. 104-A, annual company reports must be filed with the Commission on a calendar-year basis. If Accutel is 90 days or more late with such filing, its operating license may be revoked by Commission resolution. *See D.97-09-086*, App. A, pp. 3-4, paras. 12, 13, and 17. If the Commission needs to inspect Accutel’s books and records, the company is required to produce them at the Commission’s offices. Accutel must maintain reseller business records for at least four years. *See D.90-08-032*.

CSD alleges that inspection of Accutel’s tariff schedules indicates no FCC-approved tariffs have been noticed or included in Accutel’s California tariff schedules. Yet, California consumer telephone bills indicate that Accutel is providing interstate telephone services.

Accutel also failed to comply with Commission notice or recordkeeping requirements. Commission records do not indicate that Accutel has filed the requisite G.O. 104-A annual reports with the Commission.

In November 1997, Accutel relinquished possession and control of the merged databases to TSC and has told CSD that it could never retrieve its databases from TSC. Accutel’s apparent failure to respond to CSD’s data requests for customer records may constitute noncompliance with Commission requirements for maintaining these key business records.

THEREFORE, IT IS HEREBY ORDERED that:

1. An investigation on the Commission’s own motion is hereby instituted

to determine whether the operations and practices of Accutel Communications, Inc., have resulted in, but not limited to, the following unlawful conduct:

- a) Violating PUC secs. 451 by billing California consumers for products and/or services not ordered or authorized, which is unjust, unreasonable, and subject to restitution by Respondent, a statute applicable throughout the time span of the alleged conduct;
- b) Violating PUC sec. 2890 by having local exchange companies bill consumers for recurring monthly charges when such service was not authorized by consumers, a statute which applies to violations after January 1, 1999 and imposes specific remedies;
- c) Violating PUC sec. 2889.5 by switching without authorization California consumers' presubscribed toll call or long-distance carrier to another carrier or to Respondent; or,
- d) Violating G.O.s 96-A and 104-A by not meeting reseller tariffing, notice, and recordkeeping requirements (i.e. not filing FCC tariff, failure to retain customer information and failure to file annual reports).

The investigation is also to determine whether, in the event allegations are proven:

- a) Respondent should be ordered to pay restitution to all California consumers and any other persons or entities affected by Respondent's unlawful operations or practices;
- b) Respondent is unfit to engage in the resale of telecommunications services in California as a non-dominant, switchless reseller and, consequently, Respondent's CPCN should be revoked;
- c) Respondent should be ordered to cease and desist from any unlawful conduct;
- d) Respondent should be fined pursuant to PUC secs. 2107 and 2108) for violating a statute, Commission order, regulation, or decision; and,
- e) Whether if Accutel is found to have engaged in unlawful cramming or slamming, whether the

commission should order the billing telephone companies to terminate billing and collection services for Accutel pursuant to P.U.C. sec. 2889.9(c).

2. Within 20 days of the date of service of this OII, the Respondent shall provide CSD Special Agent Richard with full, complete, responses to the questions in Appendix A. Respondent's data responses shall be transmitted with an accompanying statement executed by a director or officer of the company and attesting to the accuracy and completeness of its responses, under penalty of perjury.

3. Staff's investigative reports contain data provided by regulated public utilities, such as PIC dispute data received from PacBell. Some of this data has been redacted in the CSD report for public release. However, to afford Respondent due process, the unredacted data will be made available to the Respondent if it so requests, but they are not to release customer - specific identifying information unless they obtain prior approval from the assigned Administrative Law Judge.

4. Staff shall monitor consumer complaints about Accutel and bring to the Commission's attention any additional relevant information about the Respondent. The OII may be amended for good cause to add new and/or additional charges. Any such proposal shall be presented to the Commission in the form of a motion to amend the OII and shall be supported by declaration.

5. After this OII's mailing date and until this proceeding is closed, all applications or advice letters filed or submitted by Respondent or any persons or business entities affiliated with them, shall be consolidated with this OII.

6. Accutel shall immediately inform CSD of the name, address, and telephone number of the facilities-based and local exchange carriers provisioning California customers for Accutel. At CSD's direction, these carriers shall provide records of customers' PIC changes, dispute numbers, and any other additional

information needed to assist CSD in completing its investigation. These underlying and LEC carriers shall retain all such records and any other PIC dispute data that would be necessary for effecting restitution in this proceeding. Staff shall report at the PHC if it is unable to secure this information.

7. The Staff shall continue its investigative and discovery processes into Respondent's operations and practices. Accutel must notify Staff of any plans to transfer its operating authority and provide Staff with any additional information as requested. Any data which Staff wishes to present as evidence in this proceeding shall be provided to the Respondent either in the form of an investigative report or prepared direct testimony, as part of this OII or as the Commission may direct at a Commission prehearing conference ("PHC") or otherwise.

8. This ordering paragraph suffices for the "preliminary scoping memo" required by Commission Rule 6(c). This proceeding is categorized as an adjudicatory proceeding and will be set for evidentiary hearing. The issues of this proceeding are framed in the above OII. A prehearing conference shall be scheduled to set a hearing schedule in this docket, dates for exchange of written witness testimonies, the number and order of the parties' witnesses, and resolving any discovery issues. Regarding categorization of this proceeding, this order is appealable under Rule 6.4. Any person filing a response to this OII shall state in its response any objections to the order regarding the need for hearings, issues to be considered, or the proposed hearing schedule. However, objections must be confined to jurisdictional issues that would nullify any eventual Commission decision on the merits of the alleged violations, and not pertain to factual assertions that are the subject of evidentiary hearings.

The Executive Director shall cause this order, complete with the investigative reports submitted by Staff, to be personally served on Accutel's agent for service in California at: Warner Bott Berry, One Maritime Plaza, Suite 700,

I. _____

L/IRA/pds

San Francisco, CA 94111. A copy of this Oil and Staff Reports will also be sent by certified mail with return receipt requested to: Lynn Soreide, President of Accutel, 100 East Sample Road, Suite 210, Pompano Beach, Florida.

This order is effective today,

Dated _____, at San Francisco, California.

Appendix A

Respondent shall provide to the following information within twenty (20) days of service of the OII:

1. For all of 1998 and through March 1999, provide the verification tapes and/or other records used by an independent third party verification company, that show Accutel has complied with California Public Utilities Code section 2889.5 when switching California customers' presubscribed intrastate toll and/or long distance provider.
2. Provide a copy of all sales scripts used during 1998 and thus far into 1999 by Accutel or a telemarketing company, when soliciting California customers to switch to Accutel's telecommunication services. Provide the name, address and telephone number of the telemarketing company.
4. Describe specifically any business relations between Accutel and Coral Communications, Inc., and/or Frontier, and provide copies of any agreements, contracts, and correspondence between the two entities.
5. Provide copies of any contracts or other agreements between Billing Concepts, VLM, TCS, or OAN and Accutel.
6. State the name, address, and telephone number of each and every facilities-based telephone service provider which has provisioned or is currently provisioning California consumers on behalf of Accutel. For each such provider, include a copy of any contract, agreement, or other document that sets forth the beginning and ending date.