

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of Application of
Consumer Telecom, Inc. (U6984C) for
a Certificate of Public Convenience and
Necessity to Provide Resold
Commercial Local Exchange and
Interexchange Telecommunications
Services within the State of California.

A.11-01-027
(Filed January 31, 2011)

**PROTEST
OF THE CONSUMER PROTECTION AND SAFETY DIVISION
TO THE APPLICATION OF CONSUMER TELECOM, INC.**

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's Rules of Practice and Procedure (Rules), the Commission's Consumer Protection and Safety Division (CPSD), hereby protests Application (A.)11-01-027 (Application) of Consumer Telecom, Inc. (CTI) for a Certificate of Public Convenience and Necessity (CPCN). Applicant CTI is applying for authority to provide "specialized discretionary resold local intra-exchange private line telecommunications services in the AT&T California." (Application, p. 2.) However, Applicant failed to report several Federal Communications Commission (FCC) violations in Paragraphs 17 and 18 of its Application. In addition, the CPUC's Consumer Affairs Branch has received 90 consumer complaints regarding slamming, cramming, and abusive marketing since January of 2009. These complaints and omissions are cause for concern and should be the bases for Commission scrutiny of the Application.

II. BACKGROUND

CTI obtained a CPCN¹ on February 27, 2006 and was assigned corporate identification number U-6984-C. Through this new application, A.11-01-027, CTI requests authority to provide specialized discretionary intra-exchange dedicated point-to-point private line services for commercial subscribers as a competitive local carrier. CTI further seeks to have its existing interexchange registration license consolidated authorizing applicant to provide combined local and interexchange telecommunications services under a single CPCN.

Applicant was previously licensed as an interexchange carrier (U-6650-C by D.02-04-028) in Application 02-02-006. Applicant's license was revoked in September 2004 by Resolution T-16875 for failure to comply with all Commission-ordered requirements.

Applicant is a privately-held corporation organized under the laws of the State of California on September 23, 1998 as Clean Earth Energy, Inc. In December of 2001, the company changed its name to Consumer Telecom, Inc.²

III. BASIS OF PROTEST

A. Rule 1.1 Violations

Commission Rule of Practice and Procedure, Rule 1.1, obligates any entity that transacts business with the Commission to "never mislead the Commission or its staff by an artifice or false statement of fact or law."

In Paragraph 17, Applicant attests that neither it nor any affiliate has been sanctioned by the Federal Communications Commission (FCC) or any law enforcement or state regulatory agency for failure to comply with any regulatory statute, rule, or order.

¹ Decision 06-02-044.

² Application No. 11-01-027, Exhibit B, Articles of Incorporation, "Certificate of Amendment of Articles of Incorporation of Clean Earth Energy, Inc., A California Corporation." Stamped: A0574193.

The Applicant further certified in Paragraph 18 that no officer or director, who held one of these positions with another telecommunications carrier, has been found criminally or civilly liable for any actions involving misrepresentations to consumers.

Furthermore, the Commission has held that CPCNs must disclose at least as much background and history as that required of the NDIEC Application for Registration License. In D.08-12-027, the Commission stated:

“We reject ATC’s argument that the disclosure requirements of D.97-06-107 for expedited Registration Process applicants do not apply to CPCN applicants who do not use the expedited Registration Process. Regardless of which type of application is used, the issue is the same – the fitness of the applicant to provide telecommunications services in California. The question of fitness is broad and should be no different for the traditional CPCN applicant as opposed to the Registration Process applicant.”³

On Question 8 of the Application for Registration License, applicants are required to verify that applicant has not been “found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries.” Question 8 further requires applicant to verify that its officers or directors have not “been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others.”

However, CTI’s certifications in Paragraphs 17 and 18 are false. CPSD found three FCC slamming violations related to the Applicant. According to the FCC’s website, on March 25, 2010, April 27, 2009 and January 29, 2008, the FCC ruled against the Applicant for changing a consumer’s telecommunication service provider without obtaining authorization and verification from Complainant.⁴

³ D.08-12-027, p. 8.

⁴ FCC Case IC No. 09-S002462, March 25, 2010; FCC Case Nos. 08-S002248, 08-S0294923, April 27, 2009; FCC Case IC No. 07-S0284930, January 29, 2008.

Applicant also failed to disclose in Paragraph 17 that its prior license issued in 2002 (U-6650-C) had been revoked in 2004 for failing to comply with Commission-ordered requirements.

By attesting that it has not been sanctioned by the FCC or state regulatory agency, and that none of its officers who held the position of officer with another carrier have been found civilly liable, Applicant has violated Rule 1.1.

B. Consumer Complaints

CPSD has uncovered numerous complaints in the CPUC's Consumer Affairs Branch consumer complaint database. This database shows 90 consumer complaints and inquiries concerning CTI for the period beginning January 2009 to date. Most of the complaints and inquiries allege cramming, slamming, and abusive marketing by CTI. Broken down by year, there are a total of 38 complaints filed in 2009; 45 complaints filed in 2010; and 7 complaints filed in 2011.

IV. CONCLUSION

Based on the foregoing Rule 1.1 violations, and the consumer complaints against CTI, CPSD believes that this Application requires further review by the Commission. CPSD will seek further information from the Applicant concerning the issues raised in this protest. Specifically, CPSD will seek further documentation regarding the nature and background of the sanctions or fines imposed above by the FCC and will request explanations for the consumer complaints discovered. CPSD respectfully requests that the Commission give considerable weight to the issues presented in this protest before making its final decision about the Application.

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Respectfully submitted,

/s/ TRAVIS T. FOSS

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