

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

August 19, 2003

Agenda ID #2608

TO: PARTIES OF RECORD IN INVESTIGATION 99-04-023

This is the draft decision of Administrative Law Judge (ALJ) DeUlloa. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

ANGELA K. MINKIN BY PSW

Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **DRAFT DECISION OF ALJ DEULLOA** (Mailed 8/19/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation in Accutel Communications, Inc.,
d.b.a. Florida Accutel Communications, Inc.
(U-5865).

Investigation 99-04-023
(Filed April 22, 1999)

**OPINION REVOKING CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

Summary

The Certificate of Public Convenience and Necessity (CPCN) of Accutel Communications, Inc. (Accutel) is revoked because Accutel did not comply with the conditions set out in Decision (D.) 02-07-034 for maintaining its CPCN.

1. Background

In D.02-07-034, issued July 17, 2002, the Commission found that Accutel violated three sections of the Public Utilities Code, as well as two general orders of the Commission. In Ordering Paragraphs 2 and 3, Accutel was ordered to pay \$760,000 of a fine of \$1,520,000 and was required to make a compliance filing showing authority from the Secretary of State to do business in California, both within 30 days of the effective date of the order. The Executive Director was also directed, by Ordering Paragraph 5, to issue an order suspending Accutel's CPCN if Accutel did not comply with these requirements.

The Executive Director issued such an order, D.02-12-083, on December 30, 2002 suspending Accutel's CPCN. Accutel was also put on notice that if it did not pay the outstanding amount of the fine and demonstrate its authority to do

business in California within 30 days of the date of that Order, it faced permanent revocation of its CPCN. Accutel neither paid the fine nor made the demonstration of its authority to do business.

2. Discussion

We reopen this proceeding pursuant to our authority under Pub. Util. Code § 1708 in order to take further enforcement action as a result of Accutel's failure to comply with the requirements of D.02-07-034. This action is necessary because it appears that Accutel will not comply at any time in the foreseeable future.

Official records of the Secretary of State of the State of California list Accutel's corporate status as "Forfeited."¹ Official records of the Secretary of State of Florida, Accutel's state of incorporation, show its status as "Administrative Dissolution for Annual Report" as of September 22, 2000.² "A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants." Fla. Stat. § 607.1421 (2002) (internal citations omitted).³ Pursuant to Rule 73 of the Commission's Rules of Practice

¹ The definition of this status is: "The foreign corporation has lost all corporate rights and powers for failure to meet statutory filing requirements in either the Secretary of State's Office or the Franchise Tax Board." This definition is set out on the Secretary of States' web site at http://www.ss.ca.gov/business/corp/corp_help.htm#statinfo. (July 24, 2003.)

² Florida Department of State, Division of Corporations, "Corporations Online," <http://ccfcorp.dos.state.fl.us./corpweb/inquiry/search.html>. (July 24, 2003.)

³ Under Florida law, a corporation may be administratively dissolved for, among other reasons, failing to file its annual report or pay the annual report filing fee. Fla. Stat. 607.1420 (2002).

and Procedure, we take official notice of these official records and statutory provisions.⁴

Therefore, it is clear that Accutel is not currently authorized to do business in California and its sole authority in even its state of incorporation is to wind down its affairs. This is not the status of a viable business entity and, coupled with its failure to comply with our prior orders, demonstrates that its CPCN should be revoked.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Joseph DeUlloa is the assigned Administrative Law Judge (ALJ) in this proceeding.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. Accutel has not complied with Ordering Paragraphs 2 and 3 of D.02-07-034.
2. Accutel has neither paid the outstanding amount of the fine levied in D.02-07-034 nor demonstrated its authority to do business in California at any time since D.02-07-034 was issued.
3. Accutel has lost all corporate rights and powers in California.

⁴ See Evid. Code § 452.

4. Accutel has been administratively dissolved in Florida, its state of incorporation.

Conclusions of Law

1. Accutel's CPCN should be revoked because it has not complied with Ordering Paragraphs 2 and 3 of D.02-07-034.

2. Accutel's CPCN should be revoked because it cannot lawfully do business in California.

3. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Certificate of Public Convenience and Necessity of Accutel Communications, Inc. (Accutel) is revoked.

2. All California local exchange carriers and billing agents shall cease doing business with Accutel immediately.

3. The Director of the Telecommunications Division shall give notice of this Order to all California local exchange carriers.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.