

Decision SS 05 067 MAY 25 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion to determine the need for revisions to General Order 96-A applicable to radiotelephone utilities, cellular mobile radio-telephone utilities, and certificated cellular resellers.

R.87-08-017
(Filed August 18, 1987)

In the Matter of the Application of BAY AREA CELLULAR TELEPHONE COMPANY for a certificate of public convenience and necessity under Section 1001 of the Public Utilities Code of the State of California for authority to construct and operate a new domestic public cellular radio-telecommunication service to the public in the Greater Bay Area encompassing the counties of San Francisco, Alameda, Contra Costa, Santa Clara, San Mateo and Marin.

Application 86-02-001
(Modification Petition filed December 1, 1986; Supplement to Petition filed March 9, 1987)

CIS ID No. U-3007-C

Application of GTE MOBILNET OF SAN FRANCISCO LIMITED PARTNERSHIP, and GTE MOBILNET OF SAN JOSE LIMITED PARTNERSHIP for certificates of public convenience and necessity to construct and operate a domestic cellular mobile radio system in the San Francisco-Oakland and San Jose Metropolitan areas.

Application 85-02-021
(Modification Petition filed January 6, 1987)

CIS ID No. U-3002-C

O P I N I O N

Statement of Facts

In 1982 the Federal Communications Commission (FCC), in substantial part because of increasing deterioration in the quality of noncellular mobile telecommunication services in urban areas, determined that an immediate need for cellular telephone services had been established, and that such services should be made available throughout this country expeditiously, but within a market structure it mandated for the new industry (Memorandum Opinion and Order on Reconsideration, 47 Fed. Reg. 10018, 100033-34; 89 FCC 2d (1982)).

The structure adopted by the FCC permitted no more than two facilities based carriers in any urban cellular market area (i.e., Standard Metropolitan Statistical Area, or SMSA); one to be a wireline (Frequency Block B) firm (typically a relatively integrated telecommunications company such as Pacific Telesis or GTE which possessed local telephone exchange capacity), and the other a nonwireline (Frequency Block A) firm (typically a nonintegrated telecommunications company which did not possess local telephone exchange capacity).

The FCC requires that each facilities based carrier provide service to at least 75% of its SMSA. Subject to this requirement each can offer its own discretionary cell network arrangement within that SMSA. Accordingly, although there may be geographical differences between the respective service access offered by each carrier within an SMSA, the resulting cell networks offered will often, but not necessarily, coincide. Each carrier's cell network is "managed" by that firm's computer based control system which also connects its cellular telephone activity to the outside communication world by means of its connection to the local telephone exchange.

Aware that a wireline cellular carrier could commence operations faster than a rival nonwireline carrier, the FCC scheme was designed to enhance competition within an SMSA in the short term as well as in the eventual rival operations. The scheme provided for open reseller operations. A reseller of cellular radio service does not construct, own, or operate any cellular radio facilities; rather it buys cellular radiotelephone numbers, normally in bulk at a discounted rate, from either cellular facilities carrier (or wholesaler), wireline or nonwireline, and resells those cellular radiotelephone numbers to end users. Thus, the FCC scheme, besides the facilities based wholesaler carriers, allowed for independent reseller and equipment firms as well as either free standing or integral reseller subsidiaries of the facilities based carriers within an SMSA.

In April 1984 by Decision (D.) 84-04-014, the Commission granted a certificate of public convenience and necessity to the Los Angeles SMSA Limited Partnership (Partnership) to construct and operate a cellular radiotelecommunications system to serve the Los Angeles area, and authorized the utility to file tariff schedules pursuant to General Order 96-A (GO 96-A) provisions.¹ That decision recognized that the Partnership would provide both wholesale and retail cellular services.

1 Telecommunications utilities, as well as all gas, electric, water, sewer system, pipeline, and heat utilities in California are subject to the provisions of GO 96-A. This general order contains the Commission's rules governing the filing of these utilities' rates, rules, and contracts relating to rates. Sections IV, V, and VI of GO 96-A provide an orderly procedure to control the rates and services and are subject to revision as the Commission deems necessary. In the period from June 18, 1981 until January 16, 1987, a minimum 30-day notice period was required for tariff changes, and protests to such filings were required to be received by the Commission not less than 20 days prior to the regular effective date of the advice letter filing.

The opinion in D.84-04-014 also concluded that this State's Constitution and the Public Utilities (PU) Code provide for our jurisdiction over operations of cellular resellers, and further concluded that all such resellers would have to be certificated utilities. However, it also stated it would permit expanded operations of presently certificated radiotelephone utilities (RTUs) to include cellular reseller operations by the expedience of use of advice letter filings. And, while stating our intention to require prospective resellers who were not already a certificated RTU (as defined in PU Code § 4902) to file an application for a certificate of public convenience and necessity under provisions of our Rules of Practice and Procedure, the opinion also stated our intention to grant such certificates on an ex parte basis to the maximum extent possible.

At about the same time as D.84-04-019 was issued, the first application (Application (A.) 84-04-019) for certification as a cellular reseller was filed by Southwestern Bell Mobile Systems, Inc. (Southwestern), not an RTU as defined in PU Code § 4902. In the Southwestern matter, the Commission was urged to take cognizance of asserted significant differences between wholesale and retail providers of cellular services. It was argued that in this new industry, the Commission would be dealing with resellers involved with a competitive marketplace, not with traditional public utility monopoly situation, and that rapid marketing responses would be a necessity for the players. Accordingly we were asked to exempt resellers in this embryonic industry from the long notice requirements for tariff changes of GO 96-A. By D.84-06-101 we cautiously and warily acknowledged probable merit to the reseller notice argument, and found that the time constraints of GO 96-A were "unduly restrictive" at that time (Finding of Fact 5 in D.84-06-010). We went on to conclude that we "should exempt resale carriers from the provisions of Sections IV, V, and VI," and "order tariff revisions to become effective on 15 days' notice"

(Conclusion of Law 2 in D.84-06-101). We granted the Southwestern authority accordingly.² In subsequent decisions wherein cellular reseller authority has been granted to other applicants not RTUs as defined in PU Code § 4902, the same format appears to have been used and the exemption granted applied only to that specific applicant.

At the same time no similar GO 96-A exemption has been extended to the integral retail operation of any facilities based carrier. This means that an integrated facilities based carrier conducting both wholesale and retail service has had to continue making both its wholesale and retail tariff filings pursuant to the notice provisions of the general order, i.e., 30 days minimum. This situation continued until January 16, 1987.

But then, effective January 16, 1987, the Commission amended GO 96-A by Resolution M-4744 to provide that unless otherwise authorized by the Commission, the effective date upon which a utility's rates, charges, rules, and classifications can first become effective shall not be less than the 40th calendar day after filing of an advice letter by the utility. The same resolution further provided that protests to such advice letter filings must be received not later than 20 days after the date the advice letter was filed. The "standard" facilities based carriers with integrated retail operations continue to be subject to the general order, including its new provisions.

2 It must be noted that D.84-06-101 resulted in ambiguity at best. While the Opinion's Findings of Fact and Conclusions of Law state that resellers "should" be exempted from the provisions of Sections IV, V, and VI of GO 96-A, the Ordering Paragraphs of that decision are limited in application to Southwestern, the applicant in that ex parte proceeding. There was no specific ordering paragraph extending the exemption to resellers as a class, nor was there any paragraph in the order incorporating these exemptions by reference. Thus the exemption is not one of general applicability.

Since these beginnings cellular telephone technology has quickly been accepted and cellular phones are transforming the way increasing numbers of individuals communicate. Anyone who can drive and talk can drive and phone. Cellular phones in many applications mean less wasted time and promote higher productivity. Their potential use appears limited only by their cost, and competition is intense. But as the industry grows the anomalies in our present regulatory scheme have caused requests for reform. Disparate application of GO 96-A is producing inequities.

For example: GTE Mobilnet of San Francisco Limited Partnership (GTE Mobilnet) in 1983 initially sought certification as the Bay Area wireline carrier, with authorization requested to provide both wholesale and retail services. But the Commission found deficiencies with regard to the retail part of the proposal, and by D.84-11-029 authorized only wholesale operations. However, the Commission did permit the applicant, through the device of filing a separate subsidiary application, to apply for reseller authority. It did this as GTE Mobilnet of California, Inc. (GTE Mobilnet of California), and by D.85-04-008 it received reseller authority. This decision also explicitly authorized the subsidiary to file tariff revisions to become effective on 15 days' notice, an exemption from the general order provisions. Thus GTE Mobilnet adheres to the general order requirement of 40 days' notice for tariff changes with respect to its wholesale tariff; but its subsidiary GTE Mobilnet of California is authorized the 15-day notice exemption from the general order.

On the other hand, Bay Area Cellular Telephone Company (BACTC) a general partnership venture (the Bay Area nonwireline cellular carrier) sought, and by D.86-05-10 was certified to construct and provide integrated cellular service, operating on both wholesale and retail levels. Before it received this dual authority, BACTC operated as a cellular reseller only, selling cellular services it obtained through its later SMSA facilities

based wireline competitor, GTE Mobilnet. As a cellular reseller it was permitted a 15-day notice exemption to GO 96-A. But when on July 21, 1986 it received its facilities based carrier dual authority, it was required also to cancel its earlier reseller tariff. Accordingly on that date BACTC filed new tariffs, wholesale and retail. But subsequent tariff changes, whether wholesale or retail, were and are required to comply with the provisions of GO 96-A, including the present 40 days' notice provision.

Consequently today, BACTC, having what was anticipated would be the "standard" facilities based carrier organization with an integral retail operation, at the retail level is in competition with not only its rival GTE Mobilnet of California, but also with the Bay Area independent cellular resellers, all of which by individual Commission decisions or by Commission resolution have been granted exemption to Sections IV, V, and VI of GO 96-A, and can make tariff revisions to become effective on 15 days' notice.

Another example: At the time this Rulemaking was instituted, and when the present captioned applications were filed, a protest to an advice letter had to be received not less than 20 days before the filing was to become effective. If the filing became effective after 15 days' notice, by definition there could be no effective protest of any tariff filed subject to the exemptions granted both GTE Mobilnet of California's operations and the resellers exempted from GO 96-A. Accordingly, these latter

retail operations had an advantage over the retail operations of any standard integrated facilities based carrier.³

Concerned over the incongruent situation that existed last year, on December 1, 1986 BACTC filed its present application, captioned here as A.86-02-001, seeking modification of earlier D.86-05-010 (the decision which granted its cellular system authority) to permit BACTC to make tariff changes to the retail portions of its tariff on 15 days' notice, consistent with the privileges held by its competition. But then on January 6, 1987, Cellular Resellers Association, Inc. (Association), a California nonprofit mutual benefit corporation composed of various cellular telephone service resellers certified by this Commission but not licensed as underlying California cellular carriers, filed its opposition to the BACTC petition. This association asserts that D.85-04-008, which gave GTE Mobilnet of California authorization to file for retail tariff changes on 15 days' notice, is a fundamental flaw in Commission oversight of the facilities based carriers. It states that by waiving Section IV.B of GO 96-A for GTE Mobilnet of California with regard to its retail tariff changes we made it impossible for the standard reseller, or any others for that matter, to timely protest any of that utility's advice letters relating to retail tariff changes. By its opposition to BACTC's

3 The amendment to GO 96-A effective January 16, 1987 improves this situation since now the protest must be received not later than 20 days after the date the advice letter was filed. At least a timely filing of a protest is possible, but this does not remedy the situation fully. A protest must result either in a suspension or a denial of the protested tariff, each result requiring action by the Commission after staff preparation of either an order or a resolution. Commission meetings usually are at intervals of approximately two weeks. Should a filing be made a day or two before a meeting, and a protest be filed within a few days, the next Commission meeting could occur more than 15 days after the tariff filing and the Commission cannot act timely on the matter.

petition the Association asks that we now not compound the present flaw by extending the same privilege to BACTC. Instead, we are urged by the Association to withdraw the exemption from all facilities based carrier entities, whatever their organizational structure, whether "standard" integrated or separated as subsidiaries.

On January 6, 1987 (the same day the Association filed its opposition to the BACTC modification petition), the Association also filed its present petition, captioned here as A.85-02-021. By that petition the Association asks modification of D.85-04-008 (the GTE Mobilnet of California certification) to eliminate GTE Mobilnet of California's exemption from the 30-day rule of Section IV.B of GO 96-A. The Association also incorporated by reference its contemporary opposition to the BACTC December 1, 1986 petition.

On March 9, 1987, citing the change effective January 16, 1987 in GO 96-A adopting the 40-day notice for tariff changes, BACTC supplemented its December 1, 1986 petition. Pointing out that the general order change exacerbated the existing unequal treatment situation, BACTC proposed that the Commission amend GO 96-A to require, with regard only to the telecommunication cellular industry, that tariff changes for the wholesale operations of the facilities based carriers continue to be subject to the 40 days' notice requirement but that for all cellular resellers, including the retail operations of the facilities based carriers, whether integral or subsidiary in organization, all tariff changes would become effective on not less than 30 days' notice. On March 13, 1987 the Association filed comments supporting this BACTC March 9, 1987 supplement petition.

RTUs providing paging and noncellular two-way mobile radiotelephone service are telecommunication utilities and are subject to the provisions of GO 96-A. Now subject to the 40 days' notice provisions of the general order, and faced with competition from paging carriers exempt from Commission regulation, they find

it increasingly difficult to respond to marketplace changes. The majority of these utilities are represented by Allied Radiotelephone Utilities of California (Allied). In view of new entries in the paging industry and more intense competition, by an April 7, 1987 letter to the Commission's Executive Director, Allied asked that we consider revision to the notice requirements of GO 96-A applicable to RTUs.

One of the sections of GO 96-A included in the above-noted exemptions granted resellers is Section VI. This provides that increases in tariff rates or changes which result in projected annual operating revenues (including the requested increase) greater than \$750,000 must be sought by formal application pursuant to our Rules of Practice and Procedure, whereas increases resulting in projected annual operating revenues totaling less than \$750,000 may be sought through advice letter filings. In April 1987 PacTel Cellular wrote to recommend that consistent with ratesetting principles accepted by us in some competitive environments,⁴ the Commission should consider relying upon marketplace variables as a reasonable substitute for the detailed application reviews conducted in monopoly situations, and adopt these in cellular

4 PacTel Cellular cited our treatment of the smaller local exchange telephone companies as set forth in D.82-08-072 where we determined that the revenue limitations as to those utilities served no useful purpose, and that the advice letter requirements of GO 96-A provided the same safeguards against unwarranted increases as those in formal applications, requiring similar justifications and showings. PacTel Cellular also noted our policy statement in PacTel and Tel. Co. (1978) 83 CPUC 428:

"Our objective in regulating the future competitive ventures of communication utilities is to allow competition to have the maximum impact on the market behavior of both regulated and unregulated competitors. In order to accomplish this objective, we will develop procedures which allow utilities to act as much like unregulated competitors as possible."

markets, exempting cellular facilities based carriers from the revenue limitation provisions of Section VI of GO 96-A.

These anomalies and related concerns being brought to the Commission's attention by the Telecommunications Branch of the then Evaluation and Compliance Division of our staff, the Commission determined on its own motion to institute a rulemaking proceeding to determine the need for revisions to GO 96-A applicable to radiotelephone utilities, cellular mobile radiotelephone utilities, and certificated cellular resellers. An order instituting rulemaking, R.87-08-017, was filed August 12, 1987. A copy of the order was mailed to each of 53 cellular facilities based utilities and cellular resellers, and to each of 85 radiotelephone utilities as well as to Association and Allied as respondents. The issues to be addressed in comments were listed as follows:

- "1. Should the present 15 days' notice period authorized to all cellular resellers be changed? If yes, is 30 days' notice, or some other period, appropriate?
- "2. Should a notice period other than 40 days be authorized to the retail operations of cellular facilities based carriers? If so, should it be the same as that of cellular resellers, or some other period?
- "3. Should a notice period other than 40 days be authorized to radiotelephone utilities providing paging and noncellular two-way mobile radiotelephone service? If so, is 30 days' notice, or some other period, appropriate?
- "4. Should cellular facilities based utilities be exempt from the revenue limitation provision of GO 96-A, Section VI?
- "5. Should cellular resellers be exempt from the revenue limitation provision of GO 96-A, Section VI?
- "6. Should radiotelephone utilities providing paging and noncellular two-way mobile service be exempt from the revenue

limitation provision of GO 96-A, Section VI?"

Responses were received from six cellular facilities based carriers; three FCC-selected cellular facilities based carriers with nonwireline facilities applications before the Commission on September 15, 1987 (two of which at that time were providing certificated cellular reseller services); two cellular resellers affiliated with facilities based carriers; Association; nine radiotelephone utilities; and Allied. Responses were varied.

Four responding facilities based wireline cellular carriers urged uniform 30-day notice requirements be applicable for both wholesale and retail tariffs of all facilities based cellular carriers, affiliated retail operations, and for all cellular resellers. They would also exempt all cellular carriers and resellers from the \$750,000 revenue limitation provisions of GO 96-A, Section VI. Three of these respondents would also apply the uniform 30-day tariff notice requirements and exemption from the revenue limitation to RTUs.

Another facilities based wireline cellular carrier would apply the existing 40-day notice requirement of the general order to the wholesale and retail tariffs of cellular carriers and to the retail tariffs of a reseller affiliated with a cellular carrier. It would also exempt cellular carriers and resellers from the revenue limitation provisions.

A responding facilities based nonwireline cellular carrier urged retention of the general order 40-day notice requirement for wholesale tariffs of the facilities based cellular carriers but would apply a 30-day notice requirement for the retail tariffs of facilities based cellular carriers, and to cellular resellers. It would also exempt all facilities based carriers from the \$750,000 revenue limitations of the general order.

Three of the applicants awaiting decision on their facilities based nonwireline cellular carrier applications (two of

which now provide cellular reseller services) propose that uniform 30-day tariff notice requirements apply to retail operations of all facilities based cellular carriers, and to the operations of cellular resellers and RTUs, but by reference would retain the 40-day notice requirement for the wholesale operations of all facilities based cellular carriers. They would also favor exemption for facilities based cellular carriers, cellular resellers, and RTUs from the general order revenue limitation.

Two other cellular resellers, both affiliated with facilities based wireline cellular carriers, would apply a uniform 30-day notice requirement to both wholesale and retail operations of facilities based cellular carriers, their affiliated retail operators, and to cellular resellers and RTUs. They also favor exemption from the revenue limitation provisions.

The Association would retain the 40-day notice requirement for wholesale tariffs for all facilities based cellular carriers, but would apply a 30-day requirement for all retail cellular providers, including retail divisions or affiliated retail operations of facilities based cellular carriers. The Association would not exempt the facilities based cellular carriers from the revenue limitation provisions of GO 96-A, Section VI, but would exempt cellular resellers.

The nine responding RTUs all urge a 30-day notice period be applicable to tariffs filed by paging and noncellular two-way mobile radiotelephone utilities, and also ask exemption from the revenue limitation provisions of GO 96-A, Section VI.

The Allied proposed a 30-day notice requirement be applicable to all tariff filings whether by facilities based carriers or resellers. They would further provide that where the advice letter does not involve a rate increase, withdrawal of service, or a materially prejudicial change in conditions, the filing should not suspend or delay the effective date unless the Commission staff seeks an Order of Investigation and Suspension.

Discussion

The responses of the respondents to this Rulemaking confirm the concerns which led us to this proceeding: adjustments to GO 96-A as it relates to the cellular telecommunications and RTU industries are necessary.

The basic purposes behind Sections IV, V, and VI of the general order are to provide orderly procedures to control the rates and services of all public utility enterprises. It is well settled that public utilities may be regulated. And they should be regulated in those respects wherein they need regulation; but regulation should go just so far, but no further than the needs which justify it, and the character of the agency to be regulated determines the character and extent of regulation necessary (Palmer v So. Cal. Mountain Water Co. (1913) 2 CRRC 43.62). With regard to Commission general orders, they may be amended or exceptions may be made in full or part to the extent we deem necessary.

Normally public utilities enjoy a large measure of monopoly. But not always. In the SMSA cellular marketplace mandated by the FCC, sellers of cellular telephone service to the developing and varied consumer public, whether operating as reseller utilities or as the retail division or subsidiary of a facilities based carrier, all must operate within the type of competitive marketplace for retail services that is evolving under a federally mandated duopoly at the facilities level of operation. The two facilities based carriers in each SMSA, with respect to their basic wholesale cellular function constitute a duopoly in that SMSA. Some say it is a "bottleneck control."

Early in our development of the regulatory scheme for this industry we were made aware of the differing competitive forces at play, and as time has progressed we have become aware of others. Assertions are being made by resellers, for example, that retail competition is being adversely affected by market-sharing arrangements of facilities based carriers with sellers of cellular

CPE. We recognize a need for flexibility, as we follow the development of relationships between competitive forces at the retail level and the operation of the facilities duopoly. In an attempt to meet that need and to enable carriers to be able to provide both rates and specific services which could be quickly responsive to the developing desires and requirements of a widening span of customers, we began through D.84-06-101 and subsequent decisions to grant exceptions from compliance with all the requirements of Sections IV, V, and VI of GO 96-A. These exceptions included ability to make tariff changes on only 15 days' notice, as well as exemptions from the total revenue limitations. Similar exceptions were also granted by Resolutions. Unfortunately these exceptions were not done on a clear-cut class basis, and full consideration was not given of all the effects on the protest procedure of the general order. While the latter was partially corrected by the amendment to GO 96-A effective January 16, 1987, there still remain problems and inequities.

The advice letter mechanism as used in the general order procedure is merely an administrative device to allow justifiable but essentially minor, routine, and ministerial changes to be made to tariffs relating to rates, service, or conditions of service, those to be expeditiously effected without necessity for the full Commission application process. But always there must be appropriate notice, and a reasonable period of time for interested parties to file comment or protest before these changes can be allowed to take effect. As stated, the January 1987 amendment to GO 96-A pertaining to the timing of protests (Section III.B) went part of the way to correct a major deficiency: it at least allowed time to make comment or protest. But as noted in footnote 3, supra, the timing of a tariff change filing and/or of a protest thereto can place such a time restriction upon our staff and the Commission as effectively to limit the usefulness of the protest. It would indeed be a waste of our time and limited resources if we

had to invoke emergency processes should a ninth hour dispute arise over a tariff change. Staff must have sufficient time at least to determine whether or not it should seek an Order of Investigation and Suspension in appropriate situations.

Nonetheless we remain persuaded that reversion to the full 40 days' notice period of GO 96-A for all would serve to unnecessarily dampen competitive objectives in this growing and competitive industry. But we also conclude that retention of the 15 days' notice period presently applicable to some is not only unfair but unrealistic. The primary purpose of a notice period is to protect the consumer from unfair discrimination and unjustified rate increases, not to delay implementation of lower rates and new offerings.

Accordingly, for all cellular reseller utilities, and the retail operations of facilities based carriers, whether integral or subsidiary in nature and legal form, we will adopt a 30 days' notice period, amending the general order to correspond, and canceling all exceptions previously made. This is the notice period generally advocated by most respondents to this rulemaking proceeding. It is also favored by our staff. We do not agree with the view expressed by several respondents that there is simply no independent policy basis which supports different notice requirements for different cellular provider classes. As stated before, the wholesale operations of the facilities based carriers constitute a duopoly market in their SMSA. In the past it has been demonstrated that there exist opportunities therein for advancing noncompensatory promotional programs which potentially could prejudice end users. We conclude that for these wholesale operations of the facilities based carriers adherence to the full notice requirements of GO 96-A is desirable. It will insure that all resellers and retailers have ample opportunity to react to changes in the wholesale tariffs proposed by the facilities based

carriers. It will also provide time for our staff to analyze and review such proposed changes.

We further conclude that the former 30 days' notice period which applied before the January 16, 1987 general order amendment is both adequate and appropriate for the paging and noncellular two-way mobile radiotelephone carriers. With at least 90 certificated noncellular RTUs operating in California, there is competition and it appears the marketplace could serve as a check upon unwarranted increases in rates. Any longer period would only induce some form of delay into the system, and any shorter period would not adequately protect the rights of a protestant. Accordingly, for these carriers we will also formally adopt a 30 days' notice period, amending GO 96-A to conform, and cancel any exceptions previously made.

We turn next to the revenue limitation provisions. Section VI of GO 96-A presently provides that a utility may obtain authorization for a rate increase by an advice letter filing only if the utility's projected annual operating revenues including the requested increase do not exceed \$750,000. By D.82-08-072 we found that "the test of whether a rate increase for a small independent telephone utility is minor in nature can be made independently of the annual operating revenues of the utility," and that requiring these utilities to be subject to the \$750,000 limit served no useful purpose.⁵ It is here contended by most respondents to our Rulemaking Order that the same reasoning could and should be applied to the cellular and RTU industries; that the procedures set forth in Rule 23 of our Rules of Practice and Procedure (Rate Increase Applications) are unnecessary and inappropriate for rate

⁵ Accordingly we granted the 19 smaller independent telephone companies' exemption from the revenue limitation on use of the advice letter, as contained in Section VI of GO 96-A.

increases filed by these industries; that they unnecessarily constrain the workings of the competitive marketplace and unduly impose burdens upon limited Commission resources, and that the advice letter procedure should apply instead. The Association, however, would not exempt the facilities based carriers. The Association points out that some of the facilities based carriers holding both wholesale and retail authority are relatively large, well capitalized entities, some of which control either the wireline or nonwireline provider in different SMSAs. But it is also a fact that the FCC scheme allows a provider competitor in each SMSA, and if one provider proposed to raise its rates, its resellers have the freedom to change providers. The advice letter procedure in no way excuses a utility from making an adequate showing and justification of its proposal. The general order's safeguards, with the amendments we add herewith, provide for proper notice, protests, and an appropriate effective date. And after staff review the Commission may also reject the filing, forcing the utility to make a formal application before an increase can become effective. We do not find that compelling need has been shown for a requirement that the application procedure be used for an increase which will generate revenues in excess of \$750,000.

Similarly, we see no reason why the Commission should not exempt RTUs providing paging and noncellular mobile two-way service from the revenue limitations of Section VI of GO 96-A. At this point in time a more streamlined regulatory process in this competitive marketplace seems indicated, and the advice letter provisions provide the same safeguards against unwarranted increases as well as requiring justification and showings similar to the formal applications.

Accordingly we will amend the general order to provide exemption from the revenue limitation provisions of Section VI for cellular facilities based carriers, both wholesale and retail,

cellular resellers, and RTUs providing paging and noncellular two-way mobile service.

The changes to GO 96-A derived in our consolidated R.87-08-017 proceeding, and relating to the effective date and notice requirements of any tariff changes pertaining to the retail operations of a facilities based carrier, will also pertain to BACTC, and will eliminate the unequal treatment alleged and complained of in BACTC's supplemental petition, captioned here as A.86-02-001, thereby obviating the need for further proceedings under A.86-02-001. Accordingly, A.86-02-001 will be dismissed.

The petition of Association captioned here as A.85-02-021, will become moot with our adoption herein of changes to GO 96-A derived from our consolidated R.87-08-017 proceeding, that is, changes relating to the effective date and notice requirements of any tariff changes pertaining to the retail operations of any separate subsidiary of a facilities based carrier. Henceforth these changes will apply to GTE Mobilnet of California, Inc., a certificated cellular reseller in California, placing all other than wholesale cellular operations on the same competitive footing in this regard. Accordingly, A.85-02-021 will be dismissed.

Finally, in response to the Rulemaking opportunity, some respondents proposed that we go further. One suggestion was that we also examine inequities allegedly resulting from disparate application of PU Code § 1001 in expanding service. Also proposed was investigation of development of a minimum-maximum rate structure to allow RTUs and cellular mobile radiotelephone providers flexibility to adopt tariff revisions within a minimum-maximum range previously approved by the Commission, immediately upon publication of revised tariffs. Another proposed adoption of a procedure where staff would have to determine at least whether or not a protest stated sufficiently substantial grounds to warrant a suspension so that the mere filing of a protest would not, as at

present, result in a de facto suspension of an advice letter. Interesting as these suggestions were, they could not be addressed without expanding the authorized scope of the Rulemaking. Consequently they were not addressed by the administrative law judge.

Parties should note that the revisions accomplished in this decision apply to the Commission's current regulatory framework for cellular utilities. There have been a number of fundamental questions raised both formally and informally about this framework. We are now considering whether to initiate a comprehensive investigation of this regulation. In that event, the outcome of the investigation could substantially affect many of the provisions considered and revised in this decision.

So, while we endorse today's changes as timely and appropriate, we may make further changes in the context of a broader review of this industry.

Findings of Fact

1. All telecommunication utilities, cellular mobile radiotelephone, cellular resellers, and RTUs are subject to the provisions of GO 96-A.
2. The advice letter mechanism as used in GO 96-A procedures is merely an administrative device to expeditiously allow justifiable but essentially minor, routine, and ministerial changes to be made to utility tariffs relating to rates, services, or conditions of service without necessity for resorting to the full Commission application process.
3. The advice letter rate increase provisions of GO 96-A provide the same safeguards against unwarranted increases, require justifications and showings similar to, and provide for protests as do the provisions set up for formal applications.
4. With the exception of cellular facilities based carrier wholesale operations, which operate within a federally mandated duopoly framework, those segments of the telecommunications

industry dedicated to provision of cellular mobile radiotelephone, cellular resale, and radiotelephone service, unlike the usual public utility operation, operate in a still evolving competitive marketplace where flexibility is necessary to meet quickly developing requirements of an expanded customer base.

5. Among other provisions and requirements, GO 96-A provides, as relevant herein, that:

- a. The effective date of tariff sheets shall not be less than the 40th calendar day after the filed date (Section IV.B).
- b. Tariff sheets which do not increase rates or charges become effective after not less than the 40th calendar day after the filed date (Section V.A).
- c. Where the proposed increase in rates are minor a utility may file for such increases by the advice letter procedure if the annual operating revenues of the utility, including the requested increase, are no greater than \$750,000 (Section VI).
- d. A protest must be received no later than 20 days after the date of a tariff filing.

6. Earlier Commission decisions and resolutions permitted exemptions from portions of GO 96-A; under general order provisions existing prior to the January 16, 1987 amendment to the general order protests were made impossible for some; and under the January 16, 1987 amendment certain conditions can make protests difficult to make and difficult for the Commission to timely act upon.

7. During the evolving Commission cellular regulatory scheme Commission decisions created some inequities which caused petitions, including those captioned here as A.86-02-001 and A.85-02-021 to be filed seeking modification.

8. The 40 days' notice constraints of Sections IV and V of GO 96-A unduly dampen competition and are unduly restrictive at

this time for the retail operations of cellular facilities based carriers, whether integral or subsidiary in form, and for cellular resellers and the paging and noncellular two-way mobile radiotelephone carriers, and should be replaced as to these entities by a 30 days' notice period.

9. The test of whether a rate increase in the cellular and RTU industry is minor in nature can be made independently of the annual operating revenues of the utility; consequently requiring the utilities in this industry to be subject to the \$750,000 limitation of Section VI of GO 96-A serves no useful purpose and they should be exempted from it so long as the Commission maintains the 40-day notice provision for the wholesale operations of facilities based carriers.

10. The petitions, captioned here as A.86-02-001 and A.85-02-021, respectively, of BACTC and Association substantially will become moot with our adoption of exemptions and amendment to GO 96-A as set forth in this opinion; consequently these applications should be dismissed.

Conclusions of Law

1. Under PU Code § 454.b this Commission may establish procedures to be followed in its consideration of proposed rate increases.

2. Based upon the foregoing findings of fact the notice period contained in Sections IV and V of GO 96-A should be changed to 30 days' notice for the retail operations of cellular facilities based carriers, whether integral or subsidiary in form, and for cellular resellers and the paging and noncellular two-way mobile radiotelephone carriers.

3. Based upon the foregoing findings of fact the cellular and RTU industry utilities should be exempted from the revenue limitation contained in Section VI of GO 96-A.

4. A.86-02-001 and A.85-02-021 should be dismissed with prejudice.

ORDER

IT IS ORDERED that:

1. In accord with the determinations made in the opinion of this decision, the following amendments to GO 96-A are adopted:

a. The second sentence of the first paragraph of Section IV-B of GO 96-A is amended to read:

"This date shall not be less than the fortieth (40th) calendar day after the filed date unless authorization by the Commission be first obtained, except that for the retail and resale operations of telephone corporations certified to retail or resell cellular radio telecommunication service, and RTUs, this date shall not be less than the thirtieth (30th) calendar day after the filed date."

b. The second sentence of Section V-A of GO 96-A is amended to read:

"Such tariff sheets, unless suspended by the Commission either upon complaint or its own motion, will become effective after not less than the regular notice (fortieth calendar day after the filed date, or thirtieth calendar day after the filed date in the instance of the retail and resale operations of telephone corporations certified to retail or resell cellular radio telecommunication service, and RTUs)."

c. The second sentence in the third paragraph of Section VI of GO 96-A is amended to read:

"This revenue limitation does not apply to the exchange telephone utilities exempted by D.82-08-072 as modified by Resolution T-10648, or to the RTUs and telephone corporations certified to wholesale, retail, or resell cellular radio telecommunication service."



2. To the extent any previous Commission decision or resolution has granted authority or exemption contrary to or in conflict with the foregoing amendments to GO 96-A, such authority or exemption is cancelled.

3. The Executive Director of the Commission shall cause a copy of Amended GO 96-A to be served by mail on each California cellular telephone utility and on each California radiotelephone carrier utility.

4. A.86-02-001 of Bay Area Cellular Telephone Company as supplemented March 9, 1987 is dismissed with prejudice.


5. A.85-02-021 of Cellular Resellers Association, Inc. is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated May 25, 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weisner, Executive Director

CPE. We recognize a need for flexibility, as we follow the development of relationships between competitive forces at the retail level and the operation the facilities duopoly. In an attempt to meet that need and to enable carriers to be able to provide both rates and specific services which could be quickly responsive to the developing desires and requirements of a widening span of customers, we began through D.84-06-101 and subsequent decisions to grant exceptions from compliance with all the requirements of Sections IV, V, and VI of GO 96-A. These exceptions included ability to make tariff changes on only 15 days' notice, as well as exemptions from the total revenue limitations. Similar exceptions were also granted by Resolutions. Unfortunately these exceptions were not done on a clear-cut class basis, and full consideration was not given of all the effects on the protest procedure of the general order. While the latter was partially corrected by the amendment to GO 96-A effective January 16, 1987, there still remain problems and inequities.

The advice letter mechanism as used in the general order procedure is merely an administrative device to allow justifiable but essentially minor, routine, and ministerial changes to be made to tariffs relating to rates, service, or conditions of service, those to be expeditiously effected without necessity for the full Commission application process. But always there must be appropriate notice, and a reasonable period of time for interested parties to file comment or protest before these changes can be allowed to take effect. As stated, the January 1987 amendment to GO 96-A pertaining to the timing of protests (Section III.B) went part of the way to correct a major deficiency; it at least allowed time to make comment or protest. But as noted in footnote 3, supra, the timing of a tariff change filing and/or of a protest thereto can place such a time restriction upon our staff and the Commission as effectively to limit the usefulness of the protest. It would indeed be a waste of our time and limited resources if we

had to invoke emergency processes should a ninth hour dispute arise over a tariff change. Staff must have sufficient time at least to determine whether or not it should seek an Order of Investigation and Suspension in appropriate situations.

Nonetheless we remain persuaded that reversion to the full 40 days' notice period of GO 96-A for all would serve to unnecessarily dampen competitive objectives in this growing and competitive industry. But we also conclude that retention of the 15 days' notice period presently applicable to some is not only unfair but unrealistic. The primary purpose of a notice period is to protect the consumer from unfair discrimination and unjustified rate increases, not to delay implementation of lower rates and new offerings.

Accordingly, for all cellular reseller utilities, and the retail operations of facilities based carriers, whether integral or subsidiary in nature and legal form, we will adopt a 30 days' notice period, amending the general order to correspond, and canceling all exceptions previously made. This is the notice period generally advocated by most respondents to this rulemaking proceeding. It is also favored by our staff. We do not agree with the view expressed by several respondents that there is simply no independent policy basis which supports different notice requirements for different cellular provider classes. As stated before, the wholesale operations of the facilities based carriers constitute a duopoly market in their SMSA. In the past it has been demonstrated that there exist opportunities therein for advancing noncompensatory promotional programs which potentially could prejudice end users. We conclude that for these wholesale operations of the facilities based carriers adherence to the full notice requirements of GO 96-A is desirable. It will insure that all resellers and retailers have ample opportunity to react to changes in the wholesale tariffs proposed by the facilities based carriers. It will also provide time for our staff to analyze and

competition and it appears the marketplace could serve as a check upon unwarranted increases in rates. Any longer period would only induce some form of delay into the system, and any shorter period would not adequately protect the rights of a protestant. Accordingly, for these carriers we will also formally adopt a 30 days' notice period, amending GO 96-A to conform, and cancel any exceptions previously made.

We turn next to the revenue limitation provisions. Section VI of GO 96-A presently provides that a utility may obtain authorization for a rate increase by an advice letter filing only if the utility's projected annual operating revenues including the requested increase do not exceed \$750,000. By D.82-08-072 we found that "the test of whether a rate increase for a small independent telephone utility is minor in nature can be made independently of the annual operating revenues of the utility," and that requiring these utilities to be subject to the \$750,000 limit served no useful purpose.⁵ It is here contended by most respondents to our Rulemaking Order that the same reasoning could and should be applied to the cellular and RTU industries; that the procedures set forth in Rule 23 of our Rules of Practice and Procedure (Rate Increase Applications) are unnecessary and inappropriate for rate increases filed by these industries; that they unnecessarily constrain the workings of the competitive marketplace and unduly impose burdens upon limited Commission resources, and that the advice letter procedure should apply instead. The Association, however, would not exempt the facilities based carriers. The Association points out that some of the facilities based carriers holding both wholesale and retail authority are relatively large,

⁵ Accordingly we granted the 19 smaller independent telephone companies exemption from the revenue limitation on use of the advice letter, as contained in Section VI of GO 96-A.

well capitalized entities, some of which control either the wireline or nonwireline provider in different SMSAs. But it is also a fact that the FCC scheme allows a provider competitor in each SMSA, and if one provider proposed to raise its rates, its resellers have the freedom to change providers. The advice letter procedure in no way excuses a utility from making an adequate showing and justification of its proposal. The general order's safeguards, with the amendments we add herewith, provide for proper notice, protests, and an appropriate effective date. And after staff review the Commission may also reject the filing, forcing the utility to make a formal application before an increase can become effective. We do not find that compelling need has been shown for a requirement that the application procedure be used for an increase which will generate revenues in excess of \$750,000.

Similarly, we see no reason why the Commission should not exempt RTUs providing paging and noncellular mobile two-way service from the revenue limitations of Section VI of GO 96-A. At this point in time a more streamlined regulatory process in this competitive marketplace seems indicated, and the advice letter provisions provide the same safeguards against unwarranted increases as well as requiring justification and showings similar to the formal applications.

Accordingly we will amend the general order to provide exemption from the revenue limitation provisions of Section VI for cellular facilities based carriers, both wholesale and retail, cellular resellers, and RTUs providing paging and noncellular two-way mobile service.

The changes to GO 96-A derived in our consolidated R.87-08-017 proceeding, and relating to the effective date and notice requirements of any tariff changes pertaining to the retail operations of a facilities based carrier, will also pertain to BACTC, and will eliminate the unequal treatment alleged and complained of in BACTC's supplemental petition, captioned here as

A.86-02-001, thereby obviating the need for further proceedings under A.86-02-001. Accordingly, A.86-02-001 will be dismissed.

The petition of Association captioned here as A.85-02-021, will become moot with our adoption herein of changes to GO 96-A derived from our consolidated R.87-08-017 proceeding, that is, changes relating to the effective date and notice requirements of any tariff changes pertaining to the retail operations of any separate subsidiary of a facilities based carrier. Henceforth these changes will apply to GTE Mobilnet of California, Inc., a certificated cellular reseller in California, placing all other than wholesale cellular operations on the same competitive footing in this regard. Accordingly, A.86-02-001 will be dismissed.

Finally, in response to the Rulemaking opportunity, some respondents proposed that we go further. One suggestion was that we also examine inequities allegedly resulting from disparate application of PU Code § 1001 in expanding service. Also proposed was investigation of development of a minimum-maximum rate structure to allow RTUs and cellular mobile radiotelephone providers flexibility to adopt tariff revisions within a minimum-maximum range previously approved by the Commission, immediately upon publication of revised tariffs. Another proposed adoption of a procedure where staff would have to determine at least whether or not a protest stated sufficiently substantial grounds to warrant a suspension so that the mere filing of a protest would not, as at present, result in a de facto suspension of an advice letter. Interesting as these suggestions were, they could not be addressed without expanding the authorized scope of the Rulemaking. Consequently they were not addressed by the administrative law judge.

A.86-02-001, thereby obviating the need for further proceedings under A.86-02-001. Accordingly, A.86-02-001 will be dismissed.

The petition of Association captioned here as A.85-02-021, will become moot with our adoption herein of changes to GO 96-A derived from our consolidated R.87-08-017 proceeding, that is, changes relating to the effective date and notice requirements of any tariff changes pertaining to the retail operations of any separate subsidiary of a facilities based carrier. Henceforth these changes will apply to GTE Mobilnet of California, Inc., a certificated cellular reseller in California, placing all other than wholesale cellular operations on the same competitive footing in this regard. Accordingly, A.86-02-001 will be dismissed.

Finally, in response to the Rulemaking opportunity, some respondents proposed that we go further. One suggestion was that we also examine inequities allegedly resulting from disparate application of PU Code § 1001 in expanding service. Also proposed was investigation of development of a minimum-maximum rate structure to allow RTUs and cellular mobile radiotelephone providers flexibility to adopt tariff revisions within a minimum-maximum range previously approved by the Commission, immediately upon publication of revised tariffs. Another proposed adoption of a procedure where staff would have to determine at least whether or not a protest stated sufficiently substantial grounds to warrant a suspension so that the mere filing of a protest would not, as at present, result in a de facto suspension of an advice letter. Interesting as these suggestions were, they could not be addressed without expanding the authorized scope of the Rulemaking. Consequently they were not addressed by the administrative law judge.

Parties should note that the revisions accomplished in this decision apply to the Commission's current regulatory framework for cellular utilities. There have been a number of

Findings of Fact

1. All telecommunication utilities, cellular mobile radiotelephone, cellular resellers, and RTUs are subject to the provisions of GO 96-A.

2. The advice letter mechanism as used in GO 96-A procedures is merely an administrative device to expeditiously allow justifiable but essentially minor, routine, and ministerial changes to be made to utility tariffs relating to rates, services, or conditions of service without necessity for resorting to the full Commission application process.

3. The advice letter rate increase provisions of GO 96-A provide the same safeguards against unwarranted increases, require justifications and showings similar to, and provide for protests as do the provisions set up for formal applications.

4. With a lesser degree applicable to cellular facilities based carrier wholesale operations which usually operate in a duopoly market situation, those segments of the telecommunications industry dedicated to provision of cellular mobile radiotelephone, cellular resale, and radiotelephone service, unlike the usual public utility operation, operate in a competitive marketplace where flexibility is necessary to meet quickly developing requirements of an expanded customer base.

5. Among other provisions and requirements, GO 96-A provides, as relevant herein, that:

- a. The effective date of tariff sheets shall not be less than the 40th calendar day after the filed date (Section IV.B).
- b. Tariff sheets which do not increase rates or charges become effective after not less than the 40th calendar day after the filed date (Section V.A).
- c. Where the proposed increase in rates are minor a utility may file for such increases by the advice letter procedure if the annual operating revenues of the utility,

fundamental questions raised both formally and informally about this framework. We are now considering whether to initiate a comprehensive investigation of this regulation. In that event, the outcome of the investigation could substantially affect many of the provisions considered and revised in this decision.

So, while we endorse today's changes as timely and appropriate, we may make further changes in the context of a broader review of this industry.

Findings of Fact

1. All telecommunication utilities, cellular mobile radiotelephone, cellular resellers, and RTUs are subject to the provisions of GO 96-A.

2. The advice letter mechanism as used in GO 96-A procedures is merely an administrative device to expeditiously allow justifiable but essentially minor, routine, and ministerial changes to be made to utility tariffs relating to rates, services, or conditions of service without necessity for resorting to the full Commission application process.

3. The advice letter rate increase provisions of GO 96-A provide the same safeguards against unwarranted increases, require justifications and showings similar to, and provide for protests as do the provisions set up for formal applications.

4. With the exception of cellular facilities based carrier wholesale operations, which operate within a federally mandated duopoly framework, those segments of the telecommunications industry dedicated to provision of cellular mobile radiotelephone, cellular resale, and radiotelephone service, unlike the usual public utility operation, operate in a still evolving competitive marketplace where flexibility is necessary to meet quickly developing requirements of an expanded customer base.

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- b. Tariff sheets which do not increase rates or charges become effective after not less than the 40th calendar day after the filed date (Section V.A).
- c. Where the proposed increase in rates are minor a utility may file for such increases by the advice letter procedure if the annual operating revenues of the utility, including the requested increase, are no greater than \$750,000 (Section VI).
- d. A protest must be received no later than 20 days after the date of a tariff filing.

6. Earlier Commission decisions and resolutions permitted exemptions from portions of GO 96-A; under general order provisions existing prior to the January 16, 1987 amendment to the general order protests were made impossible for some; and under the January 16, 1987 amendment certain conditions can make protests difficult to make and difficult for the Commission to timely act upon.

7. During the evolving Commission cellular regulatory scheme Commission decisions created some inequities which caused petitions, including those captioned here as A.86-02-001 and A.85-02-021 to be filed seeking modification.

8. The 40 days' notice constraints of Sections IV and V of GO 96-A unduly dampen competition and are unduly restrictive at this time for the retail operations of cellular facilities based carriers, whether integral or subsidiary in form, and for cellular resellers and the paging and noncellular two-way mobile radiotelephone carriers, and should be replaced as to these entities by a 30 days' notice period.

9. The test of whether a rate increase in the cellular and RTU industry is minor in nature can be made independently of the

including the requested increase, are no greater than \$750,000 (Section VI).

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8. The 40 days' notice constraints of Sections IV and V of GO 96-A unduly dampen competition and are unduly restrictive at this time for the retail operations of cellular facilities based carriers, whether integral or subsidiary in form, and for cellular resellers and the paging and noncellular two-way mobile radiotelephone carriers, and should be replaced as to these entities by a 30 days' notice period.

9. The test of whether a rate increase in the cellular and RTU industry is minor in nature can be made independently of the annual operating/revenues of the utility; consequently requiring the utilities in this industry to be subject to the \$750,000 limitation of Section VI of GO 96-A serves no useful purpose and they should be exempted from it.

10. The petitions, captioned here as A.86-02-001 and A.85-02-021, respectively, of BACTC and Association substantially will become moot with our adoption of exemptions and amendment to GO 96-A as set forth in this opinion; consequently these applications should be dismissed.

Conclusions of Law

1. Under PU Code § 454.b this Commission may establish procedures to be followed in its consideration of proposed rate increases.

2. Based upon the foregoing findings of fact the notice period contained in Sections IV and V of GO 96-A should be changed to 30 days' notice for the retail operations of cellular facilities based carriers, whether integral or subsidiary in form, and for cellular resellers and the paging and noncellular two-way mobile radiotelephone carriers.

3. Based upon the foregoing findings of fact the cellular and RTU industry utilities should be exempted from the revenue limitation contained in Section VI of GO 96-A.

4. A.86-02-001 and A.85-02-021 should be dismissed with prejudice.

ORDER

IT IS ORDERED that:

1. In accord with the determinations made in the opinion of this decision, the following amendments to GO 96-A are adopted:

a. The second sentence of the first paragraph of Section IV-B of GO 96-A is amended to read:

"This date shall not be less than the fortieth (40th) calendar day after the filed date unless authorization by the Commission be first obtained, except that for the retail and resale operations of telephone corporations certified to retail or resell cellular radio telecommunication service, and RTUs, this date shall not be less than the thirtieth (30th) calendar day after the filed date."

b. The second sentence of Section V-A of GO 96-A is amended to read:

"Such tariff sheets, unless suspended by the Commission either upon complaint or its own

annual operating revenues of the utility; consequently requiring the utilities in this industry to be subject to the \$750,000 limitation of Section VI of GO 96-A serves no useful purpose and they should be exempted from it so long as the Commission maintains the 40-day notice provision for the wholesale operations of facilities based carriers.

10. The petitions, captioned here as A.86-02-001 and A.85-02-021, respectively, of BACTC and Association substantially will become moot with our adoption of exemptions and amendment to GO 96-A as set forth in this opinion; consequently these applications should be dismissed.

Conclusions of Law

1. Under PU Code § 454.b this Commission may establish procedures to be followed in its consideration of proposed rate increases.

2. Based upon the foregoing findings of fact the notice period contained in Sections IV and V of GO 96-A should be changed to 30 days' notice for the retail operations of cellular facilities based carriers, whether integral or subsidiary in form, and for cellular resellers and the paging and noncellular two-way mobile radiotelephone carriers.

3. Based upon the foregoing findings of fact the cellular and RTU industry utilities should be exempted from the revenue limitation contained in Section VI of GO 96-A.

4. A.86-02-001 and A.85-02-021 should be dismissed with prejudice.

ORDER

IT IS ORDERED that:

1. In accord with the determinations made in the opinion of this decision, the following amendments to GO 96-A are adopted:

a. The second sentence of the first paragraph of Section

motion, will become effective after not less than the regular notice (fortieth calendar day after the filed date, or thirtieth calendar/day after the filed date in the instance of the retail and resale operations of telephone corporations certified to retail or resell cellular radio telecommunication service, and RTUs)."

c. The second sentence in the third paragraph of Section VI of GO 96-A is amended to read:

"This revenue limitation does not apply to the exchange telephone utilities exempted by D.82-08-072 as modified by Resolution T-10648, or to the RTUs and telephone corporations certified to wholesale, retail, or resell cellular radio telecommunication service."

2. To the extent any previous Commission decision or resolution has granted authority or exemption contrary to or in conflict with the foregoing amendments to GO 96-A, such authority or exemption is cancelled.

3. The Executive Director of the Commission shall cause a copy of Amended GO 96-A to be served by mail on each California cellular telephone utility and on each California radiotelephone carrier utility.

4. A.86-02-001 of Bay Area Cellular Telephone Company as supplemented March 9, 1987 is dismissed with prejudice.

5. A.85-02-021 of Cellular Resellers Association, Inc. is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.

authorization by the Commission be first obtained, except that for the retail and resale operations of telephone corporations certified to retail or resell cellular radio telecommunication service, and RTUs, this date shall not be less than the thirtieth (30th) calendar day after the filed date."

b. The second sentence of Section V-A of GO 96-A is amended to read:

"Such tariff sheets, unless suspended by the Commission either upon complaint or its own motion, will become effective after not less than the regular notice (fortieth calendar day after the filed date, or thirtieth calendar day after the filed date in the instance of the retail and resale operations of telephone corporations certified to retail or resell cellular radio telecommunication service, and RTUs)."

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4. A.86-02-001 of Bay Area Cellular Telephone Company as supplemented March 9, 1987 is dismissed with prejudice.

5. A.85-02-021 of Cellular Resellers Association, Inc. is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated MAY 25 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners