

Decision 90 04 030 APR 11 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of U.S. West
Cellular of California, Inc.)

I.90-01-013
(Filed January 9, 1990)

ORIGINAL

Jackson, Tufts, Cole & Black, by William H. Booth and Evelyn K. Elsesser, Attorneys at Law, for U.S. West Cellular of California, Inc., respondent.
Peter A. Casciato, Attorney at Law, for Cellular Resellers Association, Inc.;
Armour, Goodin, Schlotz and MacBride, by James D. Squeri, Attorney at Law, for Mobilnet; Kingston Cole, Attorney at Law, for Kingston Cole and Associates; Michael V. Rosenthal, for PacTel Cellular; and Spike Schultheis, for Mission Bell Telecommunications; interested parties.
Peter Arth, Jr., Attorney at Law, for the Commission Advisory and Compliance Division and Ravi Kumra, for the Commission Division of Ratepayer Advocates.

CEASE AND DESIST INTERIM ORDER

Statement of Facts

By Advice Letter No. 8 filed November 3, 1988, subsequently supplemented and superseded by Advice Letter No. 8-A filed November 18, 1988, U.S. West Cellular of California, Inc. (U.S. West), one of the two facilities based cellular carriers in the San Diego market, sought clarification how discounts for multiple phones in service offered pursuant to tariff provisions approved by earlier Advice Letters Nos. 2 and 4 could be provided.

U.S. West's Advice Letters Nos. 8 and 8-A were protested, and after consideration of these protests, on March 8, 1989, Resolution T-13052 was adopted by the Commission. This Resolution granted U.S. West authority to make its Advice Letter No. 8-A

effective that date, and dismissed the protests. But in adopting that Resolution, in the Discussion portion of the Resolution the Commission distinctly set forth its understanding "that unaffiliated individuals, non-profit associations, or loose 'affinity groups' would not qualify as a 'corporation or other legal entity,'" in the tariff (emphasis added).

Subsequently, questions surfaced with regard to what was perceived as an ambiguity between Special Condition G-2 of U.S. West's tariff and Resolution T-13052. U.S. West attempted to harmonize this ambiguity by interpreting it to mean that U.S. West could offer multiple unit discounts through both for-profit and non-profit entities, provided that the eligible end-user persons receiving the service were engaged on a for-profit basis in the main line of business of the aggregating entity.

It appearing that by following this interpretation U.S. West may not be adhering to the eligibility criteria accepted in Resolution T-13052, and thereby would be violating the eligibility rules specified in its multiple unit discount rate Schedule 3-T, Sections G-1, G-2, and G-3, and the schedule for rates defined in Schedule 3-T, Section A, by failing to limit offerings, the Commission on January 9, 1990 on its own motion ordered this investigation, I.90-01-013, to be instituted.

On the same day the Commission investigation was instituted, January 9, 1990, U. S. West filed Advice Letter No. 24 by which U.S. West proposed a revised Special Condition G-2 which explicitly would provide, inter alia, that:

"Any corporation or other legal entity, whether engaged in business on a for-profit or non-profit basis, will qualify for multiple unit rates for cellular service delivered to units held by employees, officers, contract agents, and members ('Eligible Persons') where (a) the Eligible Persons are engaged on a for-profit basis in the activities for which the corporation or other legal entity was organized; ..."

U.S. West's Advice Letter No. 24 was timely protested by Cellular Resellers Association which sought its suspension and incorporation into the present proceeding, I.90-01-052. In a letter response to staff, U.S. West stated it would not oppose such incorporation were the Commission to do so.

At a duly noticed Prehearing Conference (PHC) on April 5, 1990, in San Francisco before Administrative Law Judge (ALJ) John B. Weiss, U.S. West, while insisting that it had not violated, and was not violating the terms of its filed tariff, stipulated that it has offered, is offering, and is providing multiple unit discount rates to end-users through some non-profit entities.

During the PHC, it was recognized that the March 12, 1990 proposed decision of ALJ Michael J. Galvin in the generic cellular investigation, I.88-11-040, suggests that the Commission may soon issue definitive guidelines governing the conditions of large user cellular service for the future. Not wishing at this time to encroach upon the scope of that investigation, it was accepted, as a partial interim resolution for the present matter, that U.S. West might withdraw its Advice Letter No. 24 pending a final decision in I.88-11-040, after which U.S. West would be free to propose new large user discount tariffs to conform to whatever guidelines are finally set forth in the Commission's decision in I.88-11-040. U.S. West adopted that view and is formally withdrawing Advice Letter No. 24.

Concurrently, and as part of the interim resolution of this discount issue, and in recognition of the fact that by its stipulation given during the April 5, 1990 PHC, U.S. West had in fact conceded that it had and was offering multiple unit discounts to end-users through non-profit entities, avowedly consistent with its tariff provisions albeit in contravention to the scope limitation contained in Commission Resolution T-13052 (which authorized that tariff) that:

"unaffiliated individuals, non-profit associations, or loose 'affinity groups' would not qualify as a 'corporation or other legal entity,'"

the Commission will order U.S. West to immediately cease from further offering or expanding existing multiple unit discounts to non-profit entities pending future specific Commission authorization to do so. Existing multiple unit discount individual end-users will be grandfathered.

Findings of Fact

1. U.S. West, by Commission Resolution T-13052 issued March 8, 1989, was granted authority to make U.S. West's Advice Letter No. 8-A effective March 8, 1989.
2. But Commission Resolution T-13052 expressly stated the Commission's understanding that under the tariff being approved, "unaffiliated individuals, non-profit associations, or loose 'affinity groups' would not qualify as a 'corporation or other legal entity.'"
3. During a PHC on April 5, 1990, U.S. West stipulated that it had and was presently offering and providing multiple rate discounts to end-users through both for-profit and non-profit entities.
4. While harm may have occurred to some reseller parties by the practice stated in Finding 3, the degree sustained and equity to innocent end-user purchasers does not mandate withdrawal of existing multiple unit discounts to present end-users receiving the discounts through non-profit entities.
5. A freezing of U.S. West's current end-user list of customers receiving multiple unit discounts through association with non-profit entities will preserve the status quo until these issues are addressed and resolved in I.88-11-040.

Conclusions of Law

1. U.S. West should be ordered to cease and desist immediately from offering or providing multiple unit discounts to end-users through non-profit entities, except for those individual end-users receiving these rates as of the effective date of this order.

2. To prevent further violations of Resolution T-13052, the order following should be made effective immediately.

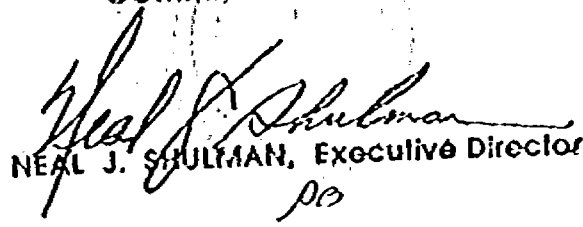
IT IS ORDERED that U.S. West Cellular of California, Inc. shall cease and desist from offering or providing multiple rate discounts to end-users where the aggregating entity is a non-profit entity.

This order is effective today.

Dated APR 11 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SHULMAN, Executive Director
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