L/rys

Decision 90-10-047, October 12, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the regulation of cellular radiotelephone utilities.	I.88-11-040 (Filed November 23, 1988)
And Related Matters	Application 87-02-017 (Filed February 6, 1987) Case 86-12-023 (Filed December 12, 1986)

ORDER DENYING REHRARING AND MODIFYING DECISION 90-06-025

ADVANTAGE GROUP, CELLULAR RESELLERS' ASSOCIATION (CRA), and CELLULAR DYNAMICS TELEPHONE COMPANY (CDT) have filed applications for rehearing of Decision (D.) 90-06-025. PACTEL CELLULAR and its affiliates (Pactel) have filed a request for clarification of D.90-06-025, and U. S. WEST CELLULAR OF CALIFORNIA (U. S. West) has filed a petition for modification. LOS ANGELES CELLULAR TELEPHONE COMPANY (L. A. Cellular) has responded to the three applications for rehearing. CRA has filed comments supporting Advantage Group's and CDT's applications, and a "Consolidated opposition" to Pactel's and U. S. West's filings. MCCAW CELLULAR COMMUNICATIONS and eight other companies[9] (collectively, McCaw) filed a response to the applications for rehearing, stay, modification, and clarification.

9 These are: Fresno Cellular Telephone Company, Napa Cellular Telephone Company, Oxnard Cellular Telephone Company, Redding Cellular Partnership, Sacramento Cellular Telephone Company, Salinas Cellular Telephone Company, Santa Barbara Cellular Systems, Ltd., and Stockton Cellular Telephone Company.

We have considered all the allegations of error in the applications for rehearing and are of the opinion that good cause for rehearing has not been shown. We have also considered the requests for modification and clarification. We are not persuaded by the filings of the parties to make the requested changes. However, we are convinced that we should modify portions of D.90-06-025 to clarify our intent. Therefore,

IT IS ORDERED that:

1. Rehearing of D.90-06-025 is hereby denied.
2. D.90-06-025 is hereby modified as follows:

a) The second full paragraph on page 81 is modified to read:

> However, those resellers who responded to a DRA inquiry reported that the resellers' churn rate ranges from a low of 2 percent to a high of 35 percent, an average of 19 percent. If this simple average is applied to CRA's analysis discussed above, a reseller should break even in its second year of operation, even with $300 commission payments.

b) The last two paragraphs on page 75 are modified to read:

> We will require carriers to report on their retail revenues and expenses each six months. If retail revenues do not equal or exceed retail expenses, then the carrier will lose its ability to reduce the retail margin through temporary tariff filings. If a carrier's retail expenses exceed its retail revenues for two consecutive six month periods, then we will open an OII in which the carrier will have the burden of explaining why its retail operations have not been compensatory. To the extent that carrier retail operations can sustain losses over two consecutive six-month periods, we will presume the retail operations to be receiving an effective cross-subsidy from other carrier revenues. If in the course of the OII the carrier cannot bring evidence sufficient to rebut that presumption, we will

find that the carrier has in fact cross-subsidized its retail operations during that period, and we will impose sanctions that will potentially include but not be limited to a partial refund to resellers of wholesale rates they paid to the carrier. To allow this potential refund, the OII will make the carrier's wholesale rates, from and after the OII, subject to refund to account for any cross-subsidization of the carrier's retail rate. A reseller would be refunded a part of the wholesale rates it had paid after the OII, calculated in proportion to the amount of money the carrier's retail operation lost divided by the total dollars paid by the carrier's retail operation for wholesale service.

In other words, we would calculate what the wholesale tariff price would have to have been if the carrier's retail side had broken even. It would be as if the carrier's wholesale tariff had been at a price at which the carrier's retail operations would not have been subsidized, and as if the resellers had been paying that lower wholesale price during the period in question. This would assure that both resellers and carrier retail operations are in effect buying out of the same tariff.

c) The second full paragraph of page 77 is hereby modified to read:

Like other nondominant carriers, nonfacilities-based retail cellular carriers should be authorized to file tariffs applicable to cellular services, including rates, rules, regulations, and other provisions necessary to offer service to their end users. Such filings should be made in accordance with GO 96-A (excluding the provisions for filing and effective dates in Section IV of that General Order and the provisions governing filing procedures in Sections V and VI) and should be effective upon filing if rates will not decrease a carrier's customers average bill by more than ten percent. With respect to rate increases, or decreases in excess of ten percent, nondominant carriers will be subject to the advice letter process applicable to similar

rate increases sought by facilities-based carriers.

d) Finding of Fact No. 123 is hereby modified to read:

Cellular equipment discounts, contingent upon the purchase of tariffed cellular services, violate PU Code §§ 532 and 702 if those discounts are offered by utilities or their agents.

e) Ordering paragraph 8.b. is hereby modified to read:

A cellular carrier's or reseller's rate reduction tariff filing which will not have an impact on a carrier's average customer bill (i.e., the average monthly bill of all the carrier's or reseller's customers for at least the last month for which figures are available) which is greater than 10 percent (as defined by the carrier's or reseller's annual filing as provided herein) of the average customer bill, whether it be a facilities-based carrier or a reseller, shall be classified as a temporary tariff and made effective on the date filed.

f) Ordering paragraph 8.b.(2) is hereby modified to read:

If a protest is filed, the tariff shall remain a temporary tariff until the protest has been resolved or by order of the Commission; if, within six months of the filing of the temporary tariff, no resolution takes place and the Commission does not act, the protest shall be deemed denied and the tariff shall be classified as a permanent tariff pursuant to the terms of the tariff provisions.

g) The words "or reseller" are hereby added between the third and fourth words of Ordering paragraph 9.

h) Ordering paragraph 14 is hereby modified to read:

A retail cellular carrier not associated with either a facilities-based cellular carrier or an entity applying for a facilities-based carrier permit before the FCC shall be classified as a nondominant carrier, and shall obtain the same benefits as other

nondominant telecommunications carriers, except that it shall be subject to the requirements of temporary tariff filings as established herein, rather than the five-day effective date of tariffs filed by other nondominant carriers.

i) The words "or resellers" are added between the second and third words of Ordering paragraph 16.

j) Ordering paragraph 16.b. is hereby modified to read:

b. No provider of cellular telephone service may provide, either directly or indirectly, any gift of any article or service of more than nominal value (e.g., permitted gifts could be pens, key chains, maps, calendars) to any customer or potential customer in connection with the provision of cellular telephone service.

k) Ordering paragraph 16.c. is hereby modified to read:

c. No provider of cellular telephone service may provide, cause to be provided, or permit any agent or dealer or other person or entity subject to its control to provide to any customer or potential customer any equipment price concession or any article or service of other than nominal value which is paid for or financed in whole or in part by the service provider and which is offered on the condition that such customer or potential customer subscribes to the provider's cellular telephone service.

l) The discussion in D.90-06-025 beginning at the second full paragraph of page 88 and continuing through the first full paragraph on page 89 is amended to read:

Because rates are based on the market, it is difficult for carriers to determine the economies of scale they expect to receive from large-volume users. Therefore, absent any definite price support, carriers should implement a volume- user tariff if there is a demand for such service within their statistical metropolitan service areas (SMSAs). To qualify for this volume-user tariff the organization or entity must serve

as the master customer, guarantee payment for all usage by its members, and not apply any additional charges to its members for such service. In particular, carriers should not bill and collect from individual customers of the volume-user group or organization.

For purposes of monitoring carrier retail expenses and revenues under the revised USOA, volume-user service will be considered retail.

As previously discussed, a volume user is not a public utility and is not accountable to us for consumer safeguards as a reseller is. A reseller, as a public utility, incurs certain regulatory costs not applicable to volume users. Some of these costs associated with regulation are financial reporting requirements, tariff filings, rate and complaint proceedings, consumer safeguard procedures, and user fees. To grant a duopoly carrier authority to charge a volume user the same rate that it charges a reseller may be anticompetitive for the reasons discussed above and should not be granted unless the resale market is deregulated. Since we are not prepared to deregulate the resale market at this time the duopoly carriers should set their volume user rates at least five percent above the rates they charge resellers. The percentage difference is necessary to enhance cellular competition by providing resellers an opportunity to compete for volume user business. The five percent margin should not, however, affect any rate offered by a carrier to a government agency. The consumer protection disclosure provisions described in the Phase I discussion should also apply to volume users and be incorporated into the corresponding utility tariffs.

D.89-05-024's grandfather clause provides for those SJREB members receiving cellular services from BACTC at wholesale rates to continue to receive such rates until the individual members choose to terminate or leave the BACTC system.

m) Ordering paragraph 18 is hereby modified to read:

> Facilities-based carriers shall implement a "volume-user" tariff for their customers if sufficient demand exists within a MSA. The volume user tariff rate shall be set at least five percent (5%) higher than the carrier's wholesale rate. To qualify for the volume user tariff the entity must serve as the master customer, guarantee payment for all usage by its members, and not apply any additional charges to its members for such services. The five percent margin shall not affect any rate offered by a carrier to a government agency.

This order is effective today.

Dated October 12, 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. SHAPIRO, Executive Director