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Decision 91-01-033 January 25, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the regulation of
cellular radiotelephone utilities.

ORIGINAL

(Filed November 23, 1988)

And Related Matters.

Application 87-02-017
(Filed February 6, 1987)

Case 86-12-023
(Filed December 12, 1986)

(For appearances see Decision 90-06-025)

SUPPLEMENTAL OPINION

The Commission issued an interim order (Decision (D.) 90-06-025) on this cellular investigation June 6, 1990. The interim order, among other matters, recognized that facilities-based carriers enjoy economies of scale from volume usage, and concluded that a form of wholesale rates should be afforded to corporate or other legal entities, irrespective of characteristics, affinity, or professional affiliation, who contribute to volume usage and offer cellular service to a restricted group of end-users.

The order further concluded that any distinction between "bulk users" and "large users" should be ended in favor of a more pro-competitive policy of requiring only one tariff applicable to all corporate or other legal entity volume purchasers. It also requires such volume tariffs to be set at least five percent (5%) above the rates that duopoly carriers charge resellers, and not affect any rate offered by a carrier to a government agency.

To qualify for this volume tariff a corporation or other legally organized aggregating entity, without regard to for-profit, affinity, or professional affiliation distinctions, must serve as the master customer for its employees, officers, contract agents,

or members, bill and collect from these individual end-users, guarantee payment for all usage by its end-users, and not apply additional charges to these end-users for such service.

In addition, the order requires consumer protection provisions be incorporated as part of a facilities-based carrier's volume purchaser tariff. These consumer protection provisions require the volume purchasers to notify its subscribers that:

1. It is not a public utility.
2. The Commission will not resolve disputes between the volume purchaser and its individual subscribers.
3. Small Claims Court and other similar forums are available to resolve disputes if necessary.
4. The service is provided under a volume purchaser tariff from a utility and all service may be discontinued if the volume purchaser does not pay its bills.
5. The volume purchaser is not permitted to mark up the service billed by the utility or charge special cellular service fees of any kind.

Notice of these consumer protection provisions must be provided in writing to individual subscribers of the volume purchaser at the commencement of service with additional notices provided at least twice a year to each individual subscriber by the volume purchaser.

Subsequently, by D.90-12-038, in a Commission investigation into the operations, rates, and practices of U.S. West Cellular of California, Inc. (U.S. West), U.S. West was ordered to submit an advice letter filing that incorporates D.90-06-025 volume tariff provisions by March 1, 1991 if it wishes to continue to offer and provide multiple unit volume discounted rates through other than certificated resellers.

The volume tariff provisions required by D.90-06-025 became effective June 6, 1990. However, only a few facilities-based carriers have filed a volume tariff incorporating these provisions. In requiring U.S. West to submit an advice letter with volume tariff provisions discussed in D.90-06-025, we reiterated our intent to enhance effective competition with lower prices to end-users and expanded innovative services. U.S. West's March 1, 1991 filing date was selected so that a level playing field would exist for all facilities-based carriers that wish to offer and provide, or continue to offer and provide, multiple unit volume discounted rates. D.90-12-038 supplemented D.90-06-025 by requiring all facilities-based carriers to file similar tariffs by March 1, 1991. Therefore, all facilities-based cellular carriers that wish to offer and provide, or wish to continue to offer and provide, multiple unit volume discounted rates through other than certificated resellers should conform to D.90-06-025 by March 1, 1991.

Findings of Fact

1. D.90-06-025 required facilities-based multiple unit volume tariffs to be set at five percent (5%) above the rates the duopoly carriers charge resellers, and not affect any rate offered by a carrier to a government agency.

2. D.90-06-025 set forth qualifications and consumer protection provisions that must be incorporated in a facilities-based tariff to provide multiple unit volume service.

3. D.90-12-038 requires U.S. West to file a volume tariff consistent with D.90-06-025 provisions by March 1, 1991 if it wants to continue to offer and provide multiple unit volume discounted rates through other than certificated resellers.

4. The multiple unit volume discounted rate provisions required by D.90-06-025 became effective June 6, 1990.

5. Only a few facilities-based carriers have filed a multiple unit volume discounted rate to incorporate D.90-06-025 provisions.

Conclusions of Law

1. Facilities-based carriers should be required to comply with D.90-06-025 volume tariff provisions by March 1, 1991.

2. This order should be effective upon the date signed so that a level playing field for all facilities-based carriers that wish to offer and provide, or continue to offer and provide, multiple discounted rates exists.

SUPPLEMENTAL ORDER

IT IS ORDERED that any facilities-based cellular carrier that wishes to offer and provide, or continue to offer and provide, multiple unit volume discounted rates through other than certificated resellers shall submit to this Commission an advice letter by March 1, 1991 proposing modification of its tariffs conforming to D.90-06-025 multiple unit volume provisions. The Commission's Advisory and Compliance Division Director shall prepare for Commission action a resolution to suspend all such nonconforming tariffs on May 1, 1991.

The facilities-based cellular carrier's advice letter shall provide for the offering and provision of multiple unit cellular service to any corporate or other legally organized aggregating entity without regard to such entity's profit or nonprofit status, affinity, or professional affiliation distinctions. Such aggregating entity shall contract to and serve as the master customer for its employees, officers, contract agents, or members, bill and collect from these individual end-users, guarantee payment for all usage by its end-users, and not apply any additional charges to these end-users for these services. The volume tariff rates shall be set at least five percent (5%)

above the rates that the carrier charges a certificated reseller, but shall not affect any rate offered to a government agency. In addition, these volume purchaser tariffs shall contain the following consumer protection provisions requiring the volume purchaser to notify individual subscribers that:

- a. The volume purchaser entity is not a public utility.
- b. The Commission shall not resolve disputes between the volume purchaser entity and its individual subscribers.
- c. Individual subscribers shall look to Small Claims Court and similar forums to resolve disputes.
- d. The service shall be provided under a volume purchaser tariff from a utility and all services may be discontinued if the volume purchaser does not pay its bills to the utility providing the volume service.
- e. The volume purchaser shall not be permitted to mark up the service billed by the utility providing the volume service or to charge special cellular service fees of any kind.

This order is effective today.

Dated January 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

NEAL J. SULLIVAN, EXECUTIVE DIRECTOR