

L/nas

Decision 92-04-081 April 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application)
of Fresno Cellular Telephone)
Company for Rehearing of)
Resolution T-14619 re Advice)
Letter 33 regarding proposed)
rate plans.)

Application No. 91-11-027
(Filed November 12, 1991)

ORDER GRANTING REHEARING OF RESOLUTION T-14619

Fresno Cellular Telephone Company (FCTC) has filed an application for rehearing of Resolution T-14619, in which we rejected FCTC's Advice Letter (AL) 33 without prejudice and invited FCTC to file an application. We have considered all the issues and arguments raised in the application and are of the opinion that rehearing should be granted for the reasons discussed below.

FCTC filed AL 33 on April 30, 1991, requesting authority to restructure its retail rates and to modify its wholesale rates. FCTC proposed to increase access and usage charges for its basic retail rate plan. FCTC also proposed to introduce three new optional retail rate plans; a Standard Plan, a Premium Plan, and an Emergency Service Plan. Finally, FCTC proposed to increase access and usage charges for its basic wholesale rate plan. AL 33 was protested by the California Resellers Association, Inc. (CRA), who contended that the new optional plans, together with the wholesale rate increase, would substantially reduce the retail margin in violation of Ordering Paragraph (OP) 15 of D.90-06-025 (Re Regulation of Cellular Radiotelephone Utilities (1990) 36 Cal.P.U.C.2d 464). Only one customer responded to the proposed rate changes, stating his concern that the increase in basic retail rates would be used to subsidize the new Emergency Service Plan.

In Resolution T-14619, the Commission rejected AL 33 because of two major issues. Those issues are the rate increases in the basic rate plans, and the alleged margin reductions resulting from the new optional plans. The Commission stated that advice letters containing rate element increases must comply with OP 9 of D.90-06-025. The Commission found that the data supplied pursuant to OP 9 did not adequately justify the rate increases. Regarding the margin reduction issue, the Commission stated that although the proposed rate changes to the basic rates would actually increase the margin for those plans, substantial reductions in margin would occur because there was no corresponding wholesale rate for the new optional plans. The Commission concluded that an application would be a more appropriate vehicle for addressing these issues.

In rejecting AL 33, the Commission indicated the difficulties that the Commission and its staff were having in evaluating compliance with OP 9 and OP 15 of D.90-06-025. In particular, OP 9 along with the related text in D.90-06-025 (see Re Regulation of Cellular Radiotelephone Utilities, supra, 36 Cal.P.U.C.2d at p. 496), which requires a cellular carrier to substantiate a requested rate increase by providing market studies, information pertaining to return on investment, and cost-support data, is ambiguous and appears to be inconsistent with the overall regulatory framework which was established for cellular utilities in D.90-06-025.

Upon reconsideration, we believe that an application by FCTC will serve no purpose. Because the rate increase issues raised by AL 33 are directly related to the ambiguities in OP 9 of D.90-06-025, we are of the opinion that we must first consider modifying OP 9 before we can evaluate FCTC's proposed rate increase. One of the problems we will look at is the lack of a clear standard for determining when a proposed rate increase is justified. Another problem is the apparent inconsistency of OP 9 with the conclusion in D.90-06-025 that rate of return regulation is not appropriate for the cellular industry. Therefore, we will

grant rehearing of Resolution T-14619, reopen Phase II of I.88-11-040 (Investigation on the Commission's own motion into the regulation of cellular radiotelephone utilities) for the sole purpose of reexamining OP 9 of D.90-06-025, and consolidate the two proceedings.¹ The assigned administrative law judge will hold a prehearing conference in order to determine whether additional evidence is needed or whether pleadings are sufficient to modify OP 9.

OP 15, which requires a showing of retail profitability in order to deviate from the current margin, has also been difficult to apply because the cellular uniform system of accounts (USOA) does not include cost-allocation methods. Therefore, regarding the margin reduction issues raised by AL 33, we reiterate our ruling in D.92-02-076, which denied applications for rehearing of Resolutions T-14607 and T-14608 pertaining to U.S. West Cellular of California, Inc. In D.92-02-076, we upheld resolutions stating that rate changes which reduce the current margins between wholesale and retail rates cannot be made by temporary tariff or advice letter filings.

Nevertheless, in the instant case, we find no reason to require FCTC to file an application relating to the margin reduction issue when we are granting rehearing on the rate increase issue. Both issues can be considered in the same proceeding. Therefore, we will grant rehearing on the margin reduction issue as well as the rate increase issue. FCTC shall provide any information which would have been provided in an application upon request of the assigned administrative law judge.

Therefore, IT IS ORDERED:

1. Rehearing of Resolution T-14619 is granted.

1. Technically, I.88-11-040 is still open. The latest phase of that proceeding was submitted on December 5, 1991.

A. 91-11-027 L/nas*

2. Phase II of I.88-11-040 is reopened for the sole purpose of reexamining OP 9 of D.90-06-025 in order to clear up the ambiguities and inconsistencies with that portion of the decision.

3. Rehearing of Resolution T-14619 is consolidated with I.88-11-040 so that OP 9, as modified or clarified, can be applied to the rate increase aspect of AL 33.

4. The assigned administrative law judge will hold a prehearing conference in order to determine whether hearings will be necessary to review OP 9, or whether pleadings are sufficient to accomplish such modification.

5. The Executive Director is directed to cause a certified copy of this order to be served by mail on all parties in this proceeding, as well as on all parties in I.88-11-040.

This order is effective today.

Dated April 22, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director