

L/nas

Decision 92-10-030      October 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nova Cellular West, Inc., d/b/a  
San Diego Cellular (U-4038-C),

Complainant,

vs.

PacTel Cellular (U-3001-C)

Defendant.

**ORIGINAL**

Case 92-03-020  
(Filed March 10, 1992)

ORDER GRANTING REHEARING OF DECISION (D.) 92-06-027

On June 15, 1992, Nova Cellular West, Inc. (Nova) filed an application for rehearing of D. 92-06-027. D. 92-06-027 granted PacTel's motion to dismiss Nova's complaint (C. 92-03-020) against PacTel Cellular (PacTel).

Nova's complaint alleges that PacTel's refusal to accept credit card payments from wholesale customer Nova is a violation of PacTel's tariffs on file with the Commission. Furthermore, Nova maintains that PacTel's refusal is discriminatory since PacTel does accept credit card payments from some retail customers. According to Nova, PacTel's actions violate Public Utilities Code sections 453 and 532.

D. 92-06-027 concludes that there is no tariff deviation in violation of section 532 because PacTel's refusal of Nova's credit card payment is authorized by PacTel's tariff, Rule 9, "Payment of Charges". (Schedule Cal.P.U.C. No. 4-T, First Revised Sheet 14.) This conclusion is based on language in Rule 9 which provides that the acceptance of "drafts, or other negotiable instruments" shall not constitute a waiver of PacTel's right to payment by legal tender. D. 92-06-027 finds that credit

card payments are a type of draft, and that this provision allows PacTel the discretion to determine when to refuse a credit card payment and demand cash payment.

D. 92-06-027 further holds that PacTel's practice of accepting credit card payments from some retail customers, but not wholesale customers, does not constitute undue discrimination in violation of section 453. The decision concludes that it is reasonable for PacTel to refuse credit card payments from wholesalers, because of the larger processing fees involved.

In its application for rehearing, Nova contends that D. 92-06-027 incorrectly concludes that Rule 9 allows PacTel to refuse wholesalers' credit card payments, because of the decision's mistaken finding that credit card payments are drafts. In addition, Nova maintains that the decision's conclusion that PacTel's discrimination between wholesale and retail customers is reasonable is based on assumed facts.

We have carefully considered all of the allegations in the application and are of the opinion that rehearing should be granted. We conclude that D. 92-06-027 dismissed Nova's discrimination claims without providing Nova an adequate opportunity to present arguments and evidence. Accordingly, we find that Nova should be given a full opportunity to prove its claims of undue discrimination on rehearing.

Furthermore, upon reconsideration we find that regardless of the interpretation of the word draft in PacTel's tariff, Rule 9 neither allows nor prohibits PacTel's refusal of credit card payments from wholesale customers. Because Rule 9 does not apply to the subject of the instant complaint, the issue of whether credit card payments are drafts need not be addressed on rehearing of Nova's claims.

Nova has also asserted that the Commission incorrectly directed Nova to pay late charges to PacTel on the amounts Nova deposited with the Commission while Nova's complaint was pending. We find that there is no legal error in concluding Nova owes the late charges to PacTel. Nova assertedly deposited the money due

PacTel with the Commission pursuant to PacTel's Rule 10. (Schedule Cal.P.U.C. No. 4-T, Original Sheet 15, "Disputed Bills".) The decision correctly notes that Rule 10 is intended to apply in situations where the amount billed is in dispute. That is not the situation here. Therefore, Nova was properly directed to pay late charges pursuant to PacTel's Rule 9 (C).

Therefore, IT IS ORDERED that:

1) Rehearing of D. 92-06-027 is granted. This rehearing shall specifically consider whether PacTel unduly discriminated against wholesale customers when it refused to accept credit card payments from Nova.

2) Nova shall not deposit the amounts due PacTel with the Commission during the pendency of this rehearing. To avoid late charges Nova must pay PacTel the amount due.

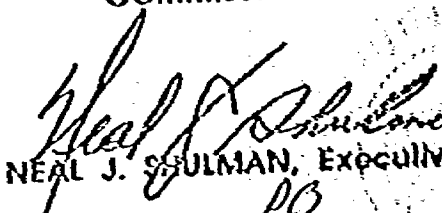
This rehearing shall be held at such time and place and before such Administrative Law Judge as shall hereafter be designated.

This order is effective today.

Dated October 6, 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. SCHULMAN, Executive Director  
PB