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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
on the Commission's own Motion of)
tariffs of Twentieth Century Cellular,)
Inc., (U-4071-C), to offer cellular)
mobile radiotelephone service under a)
program providing for rebates, at the)
customer's option and company's)
discretion, as service credits or as)
a voucher for services or equipment)
provided by the company's agent,)
Leo's Stereo filed under Advice)
Letters Nos. 21, 22, 23, 24, 25,)
and 26.)

ORIGINAL

FILED
PUBLIC UTILITIES COMMISSION
NOVEMBER 21, 1990
SAN FRANCISCO OFFICE
I.90-11-032

ORDER INSTITUTING INVESTIGATION

Background

This order institutes an investigation of Twentieth Century Cellular, Inc. (Twentieth Century) tariffs (U-4071-C) which offer cellular mobile radiotelephone service under a program providing for rebates, at the customer's option and company's discretion, as service credits or as a voucher for services or equipment by the company's agent, Leo's Stereo, filed under Advice Letters Nos. 21, 22, 23, 24, 25, and 26. Pursuant to those Advice Letters, Twentieth Century will issue a noncash rebate in the amount of one hundred dollars (\$100.00) to any new subscriber to its Basic Service Plan Number One, whose service is first activated on or after July 18, 1990, and who agrees to accept service for a minimum period of one year. The rebate can be used either in the form of a credit to be applied by Twentieth Century against the first \$100.00 in air time charges, or in the form of a voucher having a value of \$100.00 for services or equipment provided by Twentieth Century's agent, and corporate parent, Leo's Stereo. This voucher can only be applied against service or equipment obtained from Leo's Stereo at the time of activation. If the service is for any reason interrupted or terminated within the one

year period, the customer shall be liable to the Company for the entire amount of the rebate.

Discussion

Since the inception of the wholesale/retail cellular market in 1984, numerous complaints have been filed against the practice of regulated utilities bundling regulated services with an unregulated item of value to discount the otherwise effective cost of the regulated service.

This Commission has dealt with this issue in the past in D.89-07-019. That case involved an agent's practice of selling discounted cellular equipment so that end users would agree to purchase cellular service from a specific carrier. In that case the Commission concluded that cellular equipment discounts, contingent upon the purchase of regulated cellular services, violated PU Code §§ 532, 702 and established principles of jurisprudence regarding restraint of trade activities. (Coombs v. Burk (1919) 40 Cal. App. 8.) In (Coombs v Burk (1919) 40 Cal. App. 8), the court found that a municipal gas utility transaction to be an unlawful restraint of trade. A gas utility sold certain gas appliances at discounted prices. These discounts were contingent upon continued use of the utility's gas service. The court found this contract to be "not only in restraint of trade, but if upheld would tend to stifle competition and give plaintiff's assigner a monopoly of the business..." (ibid. at 10) and was therefore unlawful. In a more recent case dealing with the artificially low pricing of equipment, this Commission adopted the following guidelines:

- "a 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 cellular telephone service at any rate other than such provider's tariffed rate. No such provider may permit any agent or dealer or other person or entity subject to its control to pay for all or any portion

of the cellular service which it provides to any customer.

- "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 would be pens, key chains, maps, calendars) to any customer or potential customer in connection with the provision of cellular telephone service.
- "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." (Emphasis added.) (D.90-06-025, as modified by D.90-10-047.)

In sum, this investigation will review whether Twentieth Century Cellular has violated the Commission's policy that the practice of bundling unregulated products with regulated services is unlawful. While Twentieth Century Cellular's tariff has not been suspended, at the upcoming hearing on this matter Twentieth Century Cellular has the burden to show why its conduct is lawful.

THEREFORE, IT IS HEREBY ORDERED that an Order Instituting Investigation into the legality of Twentieth Century's Advice Letters Nos. 21, 22, 23, 24, 25, and 26 be issued and that a hearing be held on Thursday, December 20, 1990 before Administrative Law Judge Glen Walker at 10:00 a.m., in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California, to determine whether or not Twentieth Century's tariffed discount offer should be suspended indefinitely, pending a final determination in the investigation.

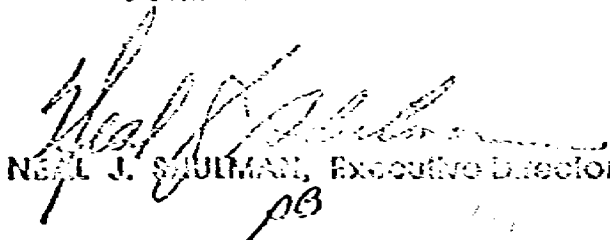
This order is effective today.

Dated November 21, 1990, at San Francisco, California.

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

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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


NEAL J. SULMAN, Executive Director
PB

I. _____

L/IRA/ddb

APPENDIX A

California Water Association
Sharon B. Carlson, Executive Secretary
12510 Fallcreek Lane
Cerritos, CA 90701

National Association of Water Companies
1725 "K" Street, N.W., Suite 1212
Washington, D.C. 20006

California Building Industry Association
1107 Ninth Street, Suite 1060
Sacramento, CA 95814
Attention: Robert Raymer

Toward Utility Rate Normalization
Karen Miller
625 Polk Street, Suite 403
San Francisco, CA 94102

Consumer Action
Ken McEldowney
116 New Montgomery Street, Suite 223
San Francisco, CA 94105

Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

END OF APPENDIX A