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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the Seasonal Plans of nine cellular utility companies affiliated with McCaw Communications, Inc	FILED Public Utilities Commission November 6, 1991 San Francisco Office I. 91-11-004

ORIGINAL

ORDER INSTITUTING INVESTIGATION

This Order Instituting Investigation (OII) is issued to address factual and legal issues relating to advice letter filings by nine cellular utility companies affiliated with McCaw Communications, Inc. (McCaw). The advice letters propose the implementation of an optional Seasonal Plan tariff for cellular customers.

Fresno Cellular Telephone Company filed Advice Letter (A.L.) No. 19 on December 31, 1990; Redding Cellular Partnership (Redding), Stockton Cellular Telephone Company (Stockton), Santa Barbara Cellular Systems, Ltd. (Santa Barbara) and Ventura Cellular Telephone Company (Ventura) filed A.L. Nos. 16, 37, 29 and 26 respectively on March 26, 1991; and Salinas Cellular Telephone Company (Salinas), Napa Cellular Telephone Company (Napa), Sacramento Cellular Telephone Company (Sacramento) and Cagal Cellular Communications Corp. (Cagal) filed A.L. Nos. 20, 30, 50, 19 respectively on March 29, 1991.

The advice letters for Redding, Stockton, Santa Barbara, Ventura, Salinas, Napa, Sacramento, and Cagal (the McCaw affiliates) were withdrawn on July 17, 1991. The utilities had not met notice requirements and decided to rectify that by withdrawing the advice letters and refiling them with proper notice. The advice letters were refiled as follows: Redding, Ventura, Stockton, Sacramento, and Santa Barbara filed A.L. Nos. 19, 32, 42, 60, and 36 respectively on July 5, 1991; Salinas, Napa, and Cagal filed A.L. Nos. 26, 37, and 24 respectively on cellular radiotelecommunications service.

The tariffs accompanying the advice letters offer a Seasonal Plan to subscribers enrolled in Basic Service. The purpose of the Seasonal Plan is to provide a five-month optional plan for those users whose usage patterns vary during the year. A typical subscriber of the Seasonal Plan would be an agricultural customer who uses his cellular phone more during the harvest season than any other time of the year. This plan gives that subscriber an option to choose a specific five-month period for which he thinks he is less likely to use the phone and receive reduced cellular service bills during that period. Prior to the offer of the Seasonal Plan, the subscriber had two choices: continue paying basic service rates, or discontinue service during the off-season and "re-activate" when the high-usage season begins.

The Seasonal Plan was first introduced by Fresno Cellular Telephone Company (FCTC), an affiliate of McCaw, on December 31, 1990. Fresno MSA Limited Partnership (FMSALP), which is the facilities-based competitor in Fresno, subsequently introduced its own seasonal plan. However, the Seasonal Plan introduced by FMSALP was different from that introduced by FCTC in one important respect. FMSALP introduced a corresponding wholesale seasonal rate plan. The result was that there was no change in the retail margin, and FMSALP's offering was in compliance with Ordering Paragraph (O.P.) No. 15 of Decision (D.) 90-06-025.

Initially, the McCaw affiliates introduced this plan in their tariffs with the following statement:

> The Company assents to, adopts and concurs in the Seasonal Plan contained in Schedule 3-T, Sheets Nos. 4.1 and 4.11 on the Fresno Cellular Telephone Company (U-3014-c) together with amendments thereto and successive issues thereof...

The McCaw affiliates did not include the rates, terms, or conditions associated with this plan. Their intent was to streamline the tariffs of the California companies affiliated with McCaw, with Fresno as the McCaw master tariff. The Telecommunications Branch of the Commission Advisory and

Telecommunications Branch of the Commission Advisory and Compliance Division (CACD) explained to the utilities our requirement that each company present all rates and conditions in its tariffs. McCaw's representatives were told to supplement the advice letters to include the Seasonal Plan's rates and terms and to serve a copy of each supplement to competitors or interested parties pursuant to Commission General Order (G.O.) 96-A, Section III. However, instead of filing supplemental advice letters, some of the McCaw affiliates filed slip-sheets, which did not meet the requirement of serving and noticing their competitors in accordance with G.O. 96-A.

CACD's main concern regarding these tariffs is that they may violate the Commission's regulatory framework for cellular radiotelecommunications utilities, established in Decision (D.) 90-06-025, and modified by D.90-10-047. In particular, the proposed rates may reduce the margin between the utilities' retail and wholesale rates. Ventura Cellular Telephone Company A.L. No. 26 was protested for that reason. The protestant to A.L. No. 26 also filed an untimely protest to Ventura A.L. No. 32 which indicated that the substance of the prior protest should be considered against both advice letters.

Comparisons between the basic service rates and the proposed rates are as follows:

FRESNO CELLULAR TELEPHONE COMPANY

Charges	Basic Service	Seasonal	Wholesale
Monthly Access	$31.00	$10.00	$24.00
peak usage	0.35/minute	1.00/minute	0.287/minute
off-peak usage	0.20/minute	1.00/minute	0.165/minute

SALINAS CELLULAR TELEPHONE COMPANY; NAPA CELLULAR TELEPHONE COMPANY; CAGAL CELLULAR TELEPHONE COMPANY

Charges	Basic Service	Seasonal	Wholesale
Monthly Access	$45.00	$10.00	$28.25
peak usage	0.45/minute	1.00/minute	0.36/minute

off-peak usage	0.20/minute	1.00/minute	0.16/minute

STOCKTON CELLULAR TELEPHONE COMPANY; SACRAMENTO CELLULAR TELEPHONE COMPANY

Charges	Basic Service	Seasonal	Wholesale
Monthly Access	$24.00	$10.00	$18.37
peak usage	0.29/minute	1.00/minute	0.239/minute
off-peak usage	0.15/minute	1.00/minute	0.123/minute

REDDING CELLULAR PARTNERSHIP

Charges	Basic Service	Seasonal	Wholesale
Monthly Access	$30.00	$10.00	$22.00
peak usage	0.35/minute	1.00/minute	0.285/minute
off-peak usage	0.20/minute	1.00/minute	0.205/minute

SANTA BARBARA CELLULAR SYSTEMS, LTD.

Charges	Basic Service	Seasonal	Wholesale
Monthly Access	$45.00	$10.00	$30.50
peak usage	0.45/minute	1.00/minute	0.37/minute
off-peak usage	0.20/minute	1.00/minute	0.16/minute

VENTURA CELLULAR TELEPHONE CO.

Charges	Basic Service	Seasonal	Wholesale
Monthly Access	$45.00	$10.00	$34.41
peak usage	0.45/minute	1.00/minute	0.370/minute
off-peak usage	0.27/minute	1.00/minute	0.222/minute

The comparison shows that the Seasonal Plan monthly access rate is far below the wholesale rate. There is no corresponding wholesale rate for the Seasonal Plan. O.P. 15 of D.90-06-025 states:

> There shall be no mandatory margin between the wholesale and retail rates of facilities-based carriers. However, individual facilities-based carriers shall not deviate from the current mandatory retail margin until cost-allocation methods are adopted and implemented as part of the cellular USOA [Uniform System of Accounts] unless they can demonstrate through an advice letter filing that the retail operation will continue to operate on a break-even or better basis with proposed rate changes that impact the mandatory retail margin.

A cost allocation system has yet to be adopted and implemented and the companies have not demonstrated in their advice letter filings that their retail operations will continue to operate on a break-even or better basis with the proposed rate change. The companies are commended for their efforts in offering reduced rates to end users, but unless the utilities introduce a corresponding wholesale tariff so that the margin is maintained, or show profitability, such offering should be deferred until the cost allocation decision is implemented. In the interim, until the cost allocation methodology has been developed, further clarification of the margin issue should be resolved following an investigation by this Commission.

The tariffs accompanying McCaw's advice letters also contain roamer rates for the Seasonal Plan. The tariffs set retail roaming rates for customers of the home carrier when they roam on other serving systems. In some cases, the retail roaming rates charged by the home carrier result in significant mark-ups over the rates charged to the home system by the serving system. This rerating by the home carrier raises issues regarding the reasonableness of the rates which will also be addressed in this investigation.

Therefore, good cause appearing,

IT IS ORDERED that an investigation on the Commission's own motion is hereby instituted into the Seasonal Plan tariffs filed by Fresno Cellular Telephone Company, Redding Cellular Partnership, Stockton Cellular Telephone Company, Santa Barbara

Cellular Systems, Ltd., Ventura Cellular Telephone Company, Salinas Cellular Telephone Company, Napa Cellular Telephone Company, Sacramento Cellular Telephone Company, and Cagal Cellular Communications Corp. under A.L. Nos. 19, 19, 42, 36, 32, 26, 37, 60, and 24 respectively for the purposes of determining whether the Advice Letters violate O.P. 15 of D.90-06-025 and whether the Advice Letters are unreasonable or unlawful in any other respect.

A prehearing conference shall be held in this matter before the assigned administrative law judge at a time and place to be determined, at which time and place all interested parties may appear and be heard.

The Executive Director is directed to cause a certified copy of this order to be immediately served upon the following counsel for the McCaw affiliated utilities and McCaw Cellular Communications, Inc.: Dhruv Khanna, Esq. whose mailing address is Morrison & Foerster, 345 California Street, San Francisco, California 94104; Rachelle B. Chong, Esq. whose mailing address is Graham and James, One Maritime Plaza, Third Floor, San Francisco, California 94111; Richard Goldberg, Esq. whose mailing address is Graham and James, One Maritime Plaza, Third Floor, San Francisco, California 94111; and Scott Morris, Esq. whose mailing address is 5400 Carillon Point, Kirkland, Washington 98033.

This order is effective today.

Dated November 6, 1991, at San Francisco, California.

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

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

Neal J. Shulman

NEAL J. SHULMAN, Executive Director