

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EVALUATION & COMPLIANCE DIVISION
Telecommunications BranchRESOLUTION NO. T-12024
May 13, 1987R E S O L U T I O N

PROTEST OF LOS ANGELES SMSA LIMITED PARTNERSHIP (U-3003-C) TO
ADVISE LETTER NO. 4 OF THE LOS ANGELES CELLULAR TELEPHONE
COMPANY (U-3009-C). RESOLUTION NO. T-12024.

RECOMMENDATION

The protest of Los Angeles SMSA should be denied.

BACKGROUND

Advice Letter No. 4 of the Los Angeles Cellular Telephone Company (LACTC) was filed on April 1, 1987. On April 20, 1987, the Los Angeles SMSA Limited Partnership (PacTel) timely filed a protest to that Advice Letter. (PacTel Cellular, the general partner in the Partnership is, ultimately, a subsidiary of Pacific Telesis Group).

PacTel is the "wireline" or "Block B" provider of cellular mobile radiotelephone service in the greater Los Angeles area; LACTC, which commenced operations on March 27, 1987 as a facilities-based carrier, is the "nonwireline" or "Block A" provider. For the preceding two and one-half years, LACTC had been purchasing service at wholesale rates from PacTel and reselling it at the retail level. In that manner, LACTC had acquired approximately one-fourth of the customer body in Los Angeles, which was transferred to the LACTC switching facilities upon activation on March 27 as noted.

Competition now exists at the wholesale level in Los Angeles, which has the largest body of cellular customers in the country. As a step in competing for new subscribers, and in offering an opportunity to switch systems to any PacTel subscribers who might now wish to do so, LACTC filed tariff revisions which defer the application of the \$50 retail/\$15 wholesale Service Establishment charge until July 1, 1987.

FACTS

PacTel protests the tariff revisions, alleging as follows:

1. That the proposed charge is noncompensatory, and therefore inherently anticompetitive "because it would allow one regulated utility to provide a portion of its service at below cost in order to shift customers away from another regulated utility which is required to charge compensatory rates." PacTel further cites (IAS) Case 85-07-024, filed July 10, 1985, representing it as precedent that "previous attempts by cellular carriers in California to effect reductions of this magnitude have been disallowed by the Commission."

2. That the purpose and effect will be to "churn" customers between systems and to convert PacTel's customers to LACTC. PacTel alleges that inasmuch as the advice letter does not distinguish existing receivers of service from persons newly subscribing, it "strongly suggests" discrimination as proscribed by PU Code Sec. 453.

3. That the filing suffers defects in that it does not fully comply with certain requirements of General Order 96-A, namely, lack of an effective date for the filing, failure to quantify revenue effect, lack of notice to the Los Angeles SMSA Limited Partnership, and failure to state what rate will be in effect after July 1, 1987.

LACTC by its attorney has filed a response to the PacTel protest. The reply to the various allegations is as follows:

1. The real issue before the Commission here is whether new cellular carriers are to be permitted to compete on the basis of price in order to attract the customers of established carriers. LACTC states that if this is not to be permitted, the pro-competitive policies of this Commission and of the Federal Communications Commission will have been for nothing, and PacTel's head start in the market will be effectively extended. LACTC further states that the activation fee in question (\$50.00) now acts as a significant barrier to customer migration from PacTel to the LACTC alternative; already faced with the inconvenience of changing telephone numbers and having their units electronically reprogrammed, an existing PacTel customer is understandably reluctant to pay a double activation fee.

2. The "churn" which would result is in fact not "wasteful churn" as alleged by PacTel; where there has been only one alternative available to customers, and a new one becomes available which may be superior, customers should not be penalized for wishing to migrate; artificial barriers to movement ought to be discouraged so that customers may freely choose on the basis of real differences in terms of price, coverage and service quality.

Moreover, LACTC states that the proposal cannot properly be

characterized as "predatory", "noncompensatory", or "discriminatory". LACTC requests the Commission to take notice of Decision 87-01-054; undisputed testimony in Cellular Resellers Assoc. v. Pacific Bell, et al (Case No. 85-10-050) establishes that cellular carriers are already accustomed to paying their dealers and agents between \$200 and \$400 in cash benefits for each customer unit enrolled. Also, since in fact the proposed rate is to be extended to first-time customers and also to those making a change, there can be no discrimination under Section 453 as all are treated equally.

3. The alleged defects in compliance with General Order 96-A are addressed by LACTC:

LACTC in fact anticipates no net revenue impact over the medium term from the short, six week program of Advice Letter 4. Access and usage charges from the additional customers attracted should offset the loss in activation charges.

The effective date is clearly stated in the Advice Letter: "The above tariff sheets are being submitted pursuant to provisions of General Order 96-A, and will take effect at the expiration of the notice requirements thereof. (emphasis supplied)

Service was made on "PacTel Mobile Access, 2355 Main Street, PO Box 19707, Irvine, CA 92714." While this is not the official name of the protestant, there is no question but that the filing reached PacTel in time for a protest to be filed. The address is in fact that of the protestant.

The number activation charge after July 1, 1987, is plainly stated in the appropriate places on the respective tariff sheets: \$15 wholesale and \$50 retail.

DISCUSSION

While the response of LACTC does not address PacTel's citation of (I&S) Case 85-07-024 in support of its allegations, we note that that case did not result in hearings, the tariff filings involved were withdrawn, and no Commission order issued. Moreover, the case involves retail reductions by GTE Mobilnet which were protested by resellers as there was no corresponding wholesale rate reduction.

We observe that LACTC's promotional offer in no way disadvantages the certificated resellers of its service, as they are relieved of the wholesale cost just as is the retail arm of LACTC.

We agree with LACTC that the substantive issue here is the propriety of LACTC's promotional offering. It appears that the other issues raised by PacTel are procedural and minor in nature, and are not compelling.

FINDINGS OF FACT

We find that the cost to LACTC of its short-term competitive offering is comparable to or less than other existing promotional activities, e.g., to commissions of \$200 or more, and therefore cannot be held to be unreasonable or to be anticompetitive in its effect, if any, on PacTel. Further, we see no bar to PacTel countering with its own offering of a comparable nature.

We further find that the offering of LACTC is not discriminatory in nature, as it is offered to any and all who wish to subscribe as new customers of LACTC.

We also find that the alleged discrepancies relative to General Order 96-A, to the extent that as they are free of errors of fact, are de minimis and should be disregarded.

CONCLUSION OF LAW

Accordingly, we conclude that the protest should be denied. Therefore, good cause appearing,

IT IS ORDERED that:

- (1) The protest of PacTel to Advice Letter No. 4 of LACTC is denied.
- (2) The effective date of Advice Letter No. 4 of LACTC and the associated tariff sheets is May 14, 1987.

The effective date of this Resolution is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 13, 1987. The following Commissioners approved it:

STANLEY W. HULETT
President
DONALD VIAL
JOHN B. OHANIAN
Commissioners



Executive Director

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

Commissioner G. Mitchell Wilk
being necessarily absent, did
not participate.