

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C-5

COMMISSION ADVISORY AND COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-13051
February 8, 1989

R E S O L U T I O N

RESOLUTION ESTABLISHING EFFECTIVE PERIODS FOR CELLULAR
RADIOTELEPHONE SERVICE PROMOTIONS FILED BY BAY AREA CELLULAR
TELEPHONE COMPANY (U-3007-C), ADVICE LETTER NUMBERS 27 AND
28, NAPA CELLULAR TELEPHONE COMPANY (U-3016-C), NUMBERS 6 AND
7, AND GTE MOBILNET OF CALIFORNIA, L.P. (U-3002-C), NUMBERS 5
AND 5A.

SUMMARY

Protests by Cellular Resellers Association to Bay Area Cellular Telephone Co. Advice Letter No. 27 and by Bay Area Cellular Telephone Co. to GTE/Mobilnet of California, L.P., Advice Letter No. 5 and 5A are dismissed.

Bay Area Cellular Advice Letters No. 27 (retail promotional offer) and No. 28 (wholesale promotional offer) are made effective on February 10, 1989, to extend for 30 days unless extended for a definite period.

Napa Cellular Telephone Co. Advice Letters No. 6 and No. 7 are made effective on 30 days notice, or February 19, 1989, to extend for 30 days unless extended for a definite period.

GTE/Mobilnet Advice Letter No. 5 and 5A is made effective on regular notice.

All cellular radiotelephone service reseller filings participating in any Bay Area cellular carrier new subscriber promotional offer filed prior to today are made effective on less than regular notice to coincide with the underlying carrier wholesale filing.

All filings by any cellular carrier or reseller after today (other than an extension by BACTC of its Advice Letters No. 27 and 28) will be made on regular notice under our General Order 96-A.

BACKGROUND

Bay Area Cellular Telephone Co. (BACTC) filed Advice Letter No. 27

(new subscriber retail promotional offering) on January 6, 1989, on 30 day notice per the Commission's General Order 96-A, Section IV.B; on the same day it filed Advice Letter No. 28 (new subscriber wholesale promotional offering) on 40 day notice per General Order 96-A.

These offers are similar to new subscriber promotional offers made by other cellular carriers in the Bay Area; any new retail customer who signs up for service during a 30 day period will receive a credit equivalent to 120 minutes of peak airtime at the standard rate (\$.45/min) or 60 minutes of peak airtime at the personal rate (\$.90/min), depending on the service plan chosen. A matching wholesale promotional offering wholesale customers for new subscribers placed by a reseller on the company's system was also offered. A new subscriber is defined as an individual who has not had service via the carrier's system for the 40-day period prior to the effective date of the filing.

Napa Cellular Telephone Co. (Napa) filed similar retail and wholesale new subscriber promotional offers with Advice Letters No. 6 and 7 on January 19, 1989; the retail filing (No. 6) is effective on 30 days regular notice, or February 19, 1989. The wholesale is normally effective on 40 days regular notice, or March 1, 1989.

On February 2, 1989, Napa filed Advice Letter No. 6-A requesting that its new subscriber retail promotional offering become effective on the same date as its new subscriber wholesale promotional offer.

On January 26, 1989, Comtech Mobile Telephone Company (Comtech, U-3007-C), a reseller of Bay Area cellular carriers, filed a protest to BACTC Advice Letter No. 27. Comtech protests "because General Order 96-A allows that the BACTC wholesale promotional plan (BACTC Advice Letter 28) available to resellers become effective 10 days after the inception of the BACTC retail plan". Comtech states that to fully compete with BACTC, "Comtech would have to operate in a noncompensatory manner" during the time before the BACTC wholesale offer commenced.

BACTC responded to the Comtech protest on February 1, 1989. BACTC notes that no party has objected to the substance of the promotional offering, and proposes two alternatives for consideration:

First, to have the Commission make the retail filing (No. 27) and the wholesale filing (No. 28) become effective on February 10.

Second, to delay the effective date of its retail offer ten days to coincide with the effective date of its wholesale offer.

On January 13, 1989, GTE/Mobilnet of California, L.P., (GTEM-CA, U-3002-C), filed Advice Letter No. 5, extending the effective period

for its new subscriber promotion through March 8 (retail) and March 18 (wholesale). GTEM-CA filed Advice Letter No. 5A on January 20, 1989, extending the retail new subscriber promotion until March 18, 1989.

On February 2, 1989 BACTC protested Advice Letters No. 5 and 5A of GTEM-CA. BACTC protests that GTEM-CA "is attempting to obtain an extension of its retail and wholesale promotionals by 'tagging on' to BACTC's promotionals which in fact start later than GTEM's promotional and lasts for only 30 days compared to GTEM's 46 days". BACTC requests that GTEM-CA's promotion should not extend beyond the original 30 days.

DISCUSSION

We are encouraged to see competitive promotional filings made by cellular carriers and resellers. Such offers may increase a firm's viability and revenues in the long run and lower its costs and prices to provide benefits for both utility and the subscriber.

This new subscriber promotional offer made by the Bay Area cellular carriers is extended to their reseller customers, too. We do not view these promotional offers as anti-competitive.

The protests that have been offered deal with timing and extensions of the effective periods of the offers. We recognize that our General Order 96-A, which was last changed by D.88-05-067 in R.87-08-017, requires a 40-day effective period for all cellular wholesale filings, while permitting 30-day effective retail filings by both carrier and reseller, and may be disadvantageous to the resellers.

One intent of our rulemaking (R.87-08-017) that last changed General Order 96-A was to prevent anti-competitive promotional filings by cellular carriers against resellers. To insure that all resellers and retailers had ample opportunity to react to changes in the wholesale tariffs we ordered that 40 days notice was required for any cellular wholesale filing. 30 days notice was found to be adequate for any retail filing.

Obviously an unforeseen circumstance has arisen where an inequity exists between carriers and resellers in the case of competitive promotional filings offered by carriers at both the retail and wholesale levels. Although the concerns of the resellers may be well founded, the recommended course of action is to petition to modify D.88-05-067, i.e., to change our General Order 96-A, rather than protest an Advice Letter filed pursuant to that order.

To alleviate the inequity in the present circumstance, we are inclined to make the wholesale offers of BACTC and Napa effective on less than the regular notice of 40 days. However, we expect that any future competitive promotional filings will become

effective on regular notice, with wholesale and retail promotions effective at the same time.

As for requests for extensions of such competitive promotional filings, we have no objection to making such requests for extension for definite periods effective on regular notice. Therefore, we reject the request of BACTC in its protest of GTEM-CA's Advice Letter No. 5 and 5A to limit the extension of GTEM-CA's competitive promotion. Should BACTC (or Napa) desire to extend its retail and wholesale promotion itself, we will permit it to do so on less than regular notice in this instance.

Finally, we desire these promotions to be compensatory in the long run. We note that certain resellers may not have had sufficient opportunity to respond in a timely manner to these new subscriber promotional offers from the carriers.

In this instance, we are inclined to assure an opportunity for all resellers to compete on a compensatory basis with the carriers' promotions; since some resellers may have reasonably expected these promotions to be suspended or rejected, and therefore may not have filed in a timely manner to be able to utilize the wholesale tariff filing from the carrier, and since we are making BACTC's and Napa's filings effective on less than regular notice, we will make any reseller new subscriber promotional filing made prior to today effective on less than regular notice to coincide with the underlying carrier wholesale offer.

We expect that all future competitive promotional filings, carrier and reseller, with the exception of a BACTC or Napa extension of their new subscriber promotional Advice Letters No. 27 and 28 and No. 6 and 7, will be made by regular notice.

FINDINGS

1. BACTC filed Advice Letter No. 27 on January 6, 1989, for a 30 day new subscriber retail promotional offering, on 30 day notice per General Order No. 96-A, Section IV.B.
2. BACTC filed Advice Letter No. 28 on January 6, 1989, a 30 day new subscriber wholesale promotional offering, on 40 day notice per General Order No. 96-A, Section IV.B.
3. Napa filed similar new subscriber promotional offers on January 19, 1989, Advice Letter No. 6 (retail) on 30 day notice, and No. 7 (wholesale) on 40 day notice, per General Order No. 96-A, Section IV.B. Napa filed Advice Letter No. 6A on February 2, 1989, requesting that its retail offering become effective at the same time as its wholesale offer.
4. Comtech protested BACTC Advice Letter No. 27 on January 26, 1989. If Comtech is to match BACTC's retail offer on a timely

basis, Comtech is forced to file a non-compensatory offer for up to 10 days; Comtech, however, may continue its promotion 10 days after BACTC's expires, and still be compensatory.

5. In this instance we desire to eliminate non-compensatory offers required by resellers to compete with retail promotions filed by cellular carriers under our General Order No. 96-A.

6. We dismiss Comtech's protest of BACTC Advice Letter No. 27, and make BACTC's new subscriber retail promotional offer (Advice Letter No. 27) effective on February 10, 1989, per BACTC's request in its response to Comtech's protest. We make BACTC's new subscriber wholesale promotional offer (Advice Letter No. 28) effective at the same time, on February 10, 1989. BACTC's retail/wholesale promotional offer will extend for 30 days unless extended by BACTC. If BACTC wishes to extend its retail/wholesale promotional offer, it may do so for a definite period on less than regular notice.

7. We will make Napa's Advice Letters No. 6 and 7 effective at the same time, on February 19, 1989. Napa may extend its retail/wholesale promotion for a definite period on less than regular notice.

8. In this instance, in order to prevent non-compensatory offers by resellers wishing to compete with carrier retail promotions, we will make all such filings made prior to today effective on less than regular notice to coincide with the underlying carrier wholesale offer.

9. All future promotional offers will be made on regular notice. We recommend that retail and wholesale promotions be requested to start at the same time. We recommend that Comtech petition to modify D.88-05-067 to deal with any disparity it finds between carrier retail and reseller promotional Advice Letter filings.

10. GTEM-CA filed Advice Letters No. 5 and 5A to extend its retail and wholesale promotional offers for a definite period. The protest of BACTC is dismissed.

IT IS ORDERED that:

(1) The protest by Cellular Resellers Association to Bay Area Cellular Telephone Co. Advice Letter No. 27 is dismissed.

(2) Advice Letters No. 27 and No. 28 of Bay Area Cellular Telephone Co. are made effective on February 10, 1989; the retail and wholesale promotions offered therein will extend for a period of 30 days. BACTC may file to extend these offers for a definite period on less than regular notice.

(3) Advice Letters No. 6 and No. 7 of Napa Cellular Telephone Co. are made effective on February 19, 1989. Napa may file to extend these retail and wholesale promotions for a definite period on less than regular notice.

(4) The protest of Bay Area Cellular Telephone Co. to GTE/Mobilnet of California, L.P., Advice Letter No. 5 and No. 5A is dismissed. GTEM-CA's Advice Letter No. 5 and No. 5A is made effective on regular notice.

(5) All cellular radiotelephone service reseller Advice Letter filings in any Bay Area cellular carrier new subscriber promotional offer filed prior to today are made effective on less than regular notice to coincide with the underlying carrier wholesale filing.

(6) All Advice Letter filings by any cellular carrier or reseller after today (other than an extension by BACTC and Napa for their Advice Letters No. 27 and 28 and No. 6 and 7) will be made by regular notice under our General Order 96-A.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on February 8, 1989. The following Commissioners approved it:

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANIAN
Commissioners



Executive Director