

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION
TELECOMMUNICATIONS BRANCHRESOLUTION NO. T-13052
March 8, 1989R E S O L U T I O N

PROTEST BY CELLULAR RESELLERS ASSOCIATION TO US WEST CELLULAR OF CALIFORNIA, INC.'S (U-3008-C) ADVICE LETTER NOS. 8 AND 8-A WHICH CLARIFIES THE CIRCUMSTANCES UNDER WHICH U.S. WEST'S MULTIPLE UNIT DISCOUNT RATES ARE AVAILABLE TO CORPORATIONS AND OTHER LEGAL ENTITIES.

SUMMARY

By Advice Letter No. 8, filed November 3, 1988, US West Cellular of California, Inc. (US West) desires to clarify the circumstances under which US West's multiple unit rates are available to corporations and other legal entities. On November 15, 1988, Mission Bell Telecommunications Corporation (Mission Bell), a wholesale customer of US West, formally protested US West's Advice Letter No. 8 on the grounds that the proposed eligibility requirements for US West's multiple unit discount rate are vague and ill-defined. In addition, Mission Bell argues that since no comparable discount is provided on the wholesale service side, Mission Bell will simply be unable to compete with the retail discount offer proposed by US West.

On November 16, 1988, Cellular Resellers Association, Inc. (CRA) similarly lodged a formal protest against US West's Advice Letter No. 8. CRA claims that US West's Advice Letter No. 8 is anti-competitive, discriminatory, and unfair. On the same date, Commission staff sent a letter to US West, through its attorney, requesting that a supplement to Advice Letter No. 8 be filed in order to permit staff additional time to study the merits of the protest. Staff also requested that US West respond to the protests. US West, pursuant to staff's request, filed a supplementary version (Advice Letter No. 8-A) of its Advice Letter No. 8 on November 18, 1988, thereby extending the effective date of the filing until March 8, 1989.

On December 19, 1988, US West filed its response to the protests of Mission Bell and CRA. US West contends that the protests are merely

attempts by Mission Bell and CRA to artificially maintain rates at a high level and to block the beneficial effects of free competition.

We agree with the facts as presented by US West and find that the terms, rates, and conditions proposed in its Advice Letters No. 8 and 8-A are appropriate and reasonable. Therefore, the protests of Mission Bell and CRA should be dismissed without prejudice.

BACKGROUND

US West is one of two facilities-based cellular carriers in the San Diego market. The other is PacTel Cellular. Advice Letter No. 8-A was filed in order to clarify the circumstances in which US West will give discounted rates for subscribers with multiple cellular phones in service. The need for the Advice Letter arose when CRA filed its complaint No. 88-09-02 against US West alleging among other things that the multiple phone rates, offered by US West, should not be made available to "unrelated individuals" who are members of non-incorporated associations. US West believes that its discounts for multiple phones in service are reasonable, and that they are a desirable result of competition between US West and PacTel Cellular. These rates result in service being made available to more end-users and at lower prices from US West than from its competitor. Furthermore, US West argues that if it can be demonstrated that the costs of serving an identified group of users are less than for others, the savings to the carrier ought to be passed through to the consumer and not the reselling middleman. And finally, US West states that the savings to US West are demonstrable, and the category of users responsible for the savings has been identified. The discount is therefore appropriate and in the public interest.

Mission Bell is a certified reseller of cellular telecommunications in the State of California and a wholesale customer of US West. Mission Bell categorically states that US West is requesting authority (by Advice Letter No. 8-A) to offer multiple unit discount rates to its retail customers under a variety of ill-defined circumstances. And since no similar filing was made by US West to make comparable multiple unit discount rates available to its wholesale customers, Mission Bell formally protested US West's Advice Letter No. 8-A, and asks this Commission to immediately suspend Advice Letter No. 8-A and to set the matter for hearing.

Mission Bell has determined that there are two fundamental problems with Advice Letter No. 8-A, each of which threatens the ability of resellers, such as Mission Bell, to viably compete in the San Diego cellular market place. First, the proposed eligibility requirements for US West's multiple discount rate are so vague and ill-defined that almost any retail customer can qualify. And, as a consequence of this amazingly open-ended offering, any individual who can claim any minimal affiliation with any group that is willing to meet US West's limited promotional requirements is eligible for the discounted rate.

The scope of US West's proposal is so broad that its regular undiscounted retail rate may well become the exception rather than the norm.

Secondly, Mission Bell argues, no comparable discount is provided on the wholesale service side. Mission Bell simply cannot compete with the almost universal retail discount offer proposed by US West if no similar discount is made available to Mission Bell. Moreover, Mission Bell contends that it will be left with the unattractive choice between:

1. forfeiting this potentially large segment of the market to US West, or
2. discounting its rates to compete with US West in the short time, while watching its margin erode in such a way as to threaten its viability.

CRA is composed of independent certificated resellers that are not licensed by the FCC or affiliated with either the wireline or non-wireline certificated wholesale/retail provider in each cellular Metropolitan Statistical Area (MSA). CRA's members resell in a number of markets, including, for example, Los Angeles, Oxnard, San Diego, and San Francisco/San Jose, and the respective contiguous areas.

CRA contends that US West's Advice Letter No. 8-A is anti-competitive, discriminatory, and unfair for a number of reasons. First, the proposed tariff revision comes in response to an abuse of US West's own tariff, whereby US West violates its own tariff and provides discriminatory discounts to classes of people without verifying their status as bonafide members of organizations that subscribe to multiple cellular numbers under one account. Indeed, CRA argues, this is a knowing intentional violation of Sections 453 and 532 of the Public Utilities Code (Code). CRA also states that to allow Advice Letter No. 8-A to take effect deprives CRS's members and the public of a public hearing to provide evidence of US West's continuing discriminatory actions and refusal to abide by its own tariff regulations.

Second, CRA believes that US West's Advice Letter No. 8-A constitutes a subterfuge by which US West will conduct business as usual under its present Corporate Plan because US West will continue to render a group discount to any individual without any affirmative duty to police its own tariff. As section (c) of Advice Letter No. 8-A provides, US West may bill any of the individuals in the ersatz classification directly, thus making it possible for anyone to claim that it is entitled to the discounted rates.

And finally, CRA argues that this discriminatory veneer of rate classification harms (1) the person who does not belong to any business organization or industry; (2) the public, because it is unable to understand how proper classifications are determined;

(3) CRA's members, because it effectively discounts basic rates of service to non-compensatory rates. The ultimate harm is done to the Commission's processes because the activities that will be allowed to occur by way of Advice Letter No. 8-A will be (a) unjust rates contrary to Section 451 of the code; (b) discriminatory preferences contrary to Section 453 of the code; and (c) charges at other than filed rates contrary to Section 532 of the code.

US West, on the other hand, claims that the protests filed by Mission Bell and CRA are merely attempts to artificially maintain rates at a high level and to block the beneficial effects of free competition. Furthermore, US West responded to the protests filed by Mission Bell and CRA in the following fashion:

1. How do the Multiple Phone Tariffs Work?

US West's multiple phone tariffs were first approved by its Advice Letter No. 2, which established reduced access and usage fees for subscribers to 25 or more units. There was no objection by Mission Bell or any other reseller to Advice Letter No. 2. Later, Advice Letter No. 4 further reduced the company's tariffs for subscribers to service for multiple phones and extended them to users of as few as two units. These new rates were fashioned in a way that subscribers with multiple phones are charged less than full retail rates, but more than the "wholesale" rates that are available to resellers and bulk users. Again, there was no protest by Mission Bell or any other reseller.

Advice Letter No. 8-A does not change the rates adopted by Advice Letter No. 4. Rather, it was intended to respond to reseller accusations that the terms for multiple phone discounts were not fully spelled out by US West tariffs. Basically, Advice Letter No. 8-A makes it clear that multiple phone rates will be available where:

- (a) a single company or association guarantees payment of individual bills sent to employees, officers, or members, or where
- (b) A single corporation or association which is organized for profit has agreed to give specified marketing assistance to US West, and where such assistance has resulted in multiple subscriptions to service by officers, employees and/or eligible members.

The first of the above criteria is common to many tariffs filed by facilities-based cellular carriers in California. See for example PacTel Cellular's Advice Letter No. 26 relating to service in San Diego. If a single end user is willing to guarantee payment for service to multiple phones, such user has delivered to US West a benefit similar to that brought by a certificated reseller putting a comparable number of units in service. Accordingly, a similar

discount should be available. This is also uniform practice elsewhere in California, insofar as so-called "corporate" and "wholesale" rates are explicitly made available to end users of multiple phones (as a courtesy, US West may render separate bills reflecting usage on individual units by particular employees, officers, and members of the entity in question). This too is a service extended by other facilities-based carriers in California.

Where US West differs from many facilities-based carriers is in its willingness to give a discount to corporations and associations where the ultimate liability for payment remains with individual employees, officers, and members, i.e., where there is no backup guarantee of payment by employees, officers, and members. While this practice clearly makes lower priced cellular services available to larger groups of end users, it does not, as alleged by Mission Bell, lower prices to "any individual who can claim any minimal affiliation with any group". Instead, US West requires that all of the following criteria be met:

- (a) The corporation or association must be legally organized for profit-making purposes.
- (b) All units must be in the hands of officers, employees, or eligible members of the entity. Members of an association are only eligible if they themselves are directly engaged in the business of the entity to qualify. Examples of the latter category would be local franchisees of national marketing chains, and real estate agents of a single brokerage house.
- (c) The corporation or association must have endorsed US West as its preferred cellular provider in San Diego and must actively assist the company in specified ways in marketing its services to its officers, employees, and members.
- (d) This assistance must have resulted in multiple subscriptions to company's service by the entity's employees, officers, or eligible members.
- (e) Each individual officer, employee or member must have satisfied company's credit and deposit requirements.

It should be clear from the above that US West does not intend to make bulk rates available to members of so-called affinity groups like AAA, neighborhood associations, senior citizen groups, and similar community organizations. Rather, the offering is confined to for-profit entities, and to persons directly involved in the business of the entity.

It is noteworthy that only 31% of US West's customers have qualified for any of the bulk rates described in Advice Letter Nos. 2, 4, and 8, while only 6% have qualified for the lowest rate. These facts

alone should lay to rest the accusations that the rates amount to an across-the-board price slash for "any individual" who can claim "any minimal affiliation with any group".

2. Are the US West Discounts Justified?

The amounts of the company's multiple unit discounts have long been stated in approved tariffs, and are clearly reasonable in situations where the entity has guaranteed payment of amounts billed to individual employees, officers and end users. Similar tariffs have also been approved for PACTel Cellular.

The only new question raised by the protests is whether a discount may also be offered when the entity, instead of guaranteeing payment, has given US West concrete marketing assistance which has resulted in multiple subscriptions by employees, officers, or eligible members. In the company's experience, the per unit cost of acquiring, billing, and collecting from multiple unit accounts, with or without an underlying guarantee, fully justifies the discounts described in the company's tariffs. Thus:

(a) Lower marketing costs: The largest single expense associated with the retail side of the cellular business is in the form of advertising costs and sales representatives' salaries and commissions. The average marketing cost per end user is greater than the per unit cost of acquiring bulk accounts. The reason for the difference is obvious. Where a corporation has opened its doors to the company's marketing efforts, has introduced the company to its employees, and has recommended the company's product, it has effectively shouldered much of the burden normally undertaken by the company through high-cost advertising campaigns.

(b) Billing and collection costs: Billing costs are roughly the same for multiple unit accounts regardless of whether or not there is a corporate guarantee. In both situations, separate itemizations are sent for each unit in service. In both cases, primary responsibility for payment is with the individual end user. While there is ultimate recourse in the guarantee situation against the entity, US West believes that even without a guarantee, bad debt losses from multiple phone accounts are minimal.

(c) Most important is the fact that multiple unit accounts experience 48% less "churn" than experienced by the company with regard to its single phone user base generally. This alone translates into customer account acquisition cost savings of about twenty five percent at the end of one year. Clearly, if US West wishes to pass these savings through to end users, it is in the public interest for it to do so.

3. Should Resellers be Entitled to an Additional Discount of Their Own?

Mission Bell and CRA argue that US West, if it is to grant discounts to end users with multiple units in service, should "make a comparable discount available to wholesale customers of US West".

The fact is of course that wholesale customers already get the maximum discount set forth in the company's tariffs. This discount applies to any customer -- whether a certificated reseller or end user -- that subscribes to 50 or more units on company's service and agrees to be bound by the terms of the wholesale tariff. What Mission Bell and CRA really desire, therefore, is a greater spread between US West's wholesale rates and its retail rates for multiple phone accounts.

Mission Bell and CRA imply that the current margin between wholesale and multiple phone rates is insignificant, and that they "cannot compete" without a greater one. This is not true. When an end user subscribes to service for two or more but fewer than 50 phones, it is not eligible for the maximum discount. Instead, depending on the number of units in service, a lesser discount is given. This too has long been the case in the San Diego market for PacTel Cellular which has its own "business" or "corporate" rates. Such rates, if extended by a reseller to end users, would still allow the reseller a spread, though a reduced one. The reduction in the spread in turn reflects the same savings to the reseller as are enjoyed by US West when it is able to market its service to end users with multiple phones in service.

Even for retail subscribers with 50 or more phones, there is a difference between retail and wholesale rates.

a. The retail subscriber continues to pay \$35.00 per number in activation fees; the wholesaler pays \$15.00. The "spread" on activation fees is 57.14%.

b. The retail bulk user pays a monthly access charge of \$26.60 per unit; the wholesaler pays \$25.20 once he subscribes to 100 or more units. This is a 5.3% "spread" on access charges.

c. The multiple phone user pays 37 cents per minute for peak hour usage, with usage being rounded up to the nearest whole minute. The wholesaler pays 32.5 cents once usage has reached 20,000 minutes per month. Wholesale time is rounded to the nearest tenth of a minute. These differences result in a 26.8% "spread" on peak usage for a call lasting 2.5 minutes.

d. The retail multiple phone user pays 18.5 cents per minute for off-peak usage, with usage being rounded up to the nearest whole minute. The wholesaler pays 15.8 cents per minute once total usage has reached

20,000 minutes. Usage is rounded to the nearest tent of a minute. The resulting "spread" is 28.8% for off-peak usage for a call lasting 2.5 minutes.

At bottom, Mission Bell and CRA argue that there should be a single, mandatory "spread" percentage applicable to all end user groups. This position is taken regardless of whether or not there are identifiable savings associated with individual user categories. US West's position is that the resellers' "spread" has never been so rigidly mandated, and that the Commission should rather pay attention to overall margins. In San Diego, these margins are greater, rather than less, than elsewhere.

If it can be demonstrated that the costs of serving an identified group of users are less than for others, the savings to the carrier ought to be passed through to the consumer, and not to the reselling middleman. Here, the savings to US West are demonstrable, and the category of users responsible for the savings has been identified. The discount is therefore appropriate, and in the public interest.

DISCUSSION

On February 2, 1989, CRA filed a response to a letter of January 11, 1989 from US West concerning US West's Advice Letter No. 8-A. CRA stated that it is important to reiterate that US West's Advice Letter No. 8-A came in response to CRA's Complaint 88-09-027, which indicates that US West is not applying its present multiple user rates, terms, and conditions in accordance with its existing tariff. In that regard, CRA agrees that this is not the time to relitigate the "margin" or "spread" that presently exists for the multiple user tariff itself. Rather, CRA argues, the issue is that the multiple user tariff is being treated by US West as its basic rate and is being offered indiscriminately to unaffiliated groups.

Since CRA believes that "this is not the time to relitigate the "margin" or "spread" that presently exists for the multiple user tariff, we assume that those parts of CRA's protest which relate to this issue may now be disregarded for purposes of decision on US West's Advice Letter No. 8-A.

What remains is a relatively simple question, which is whether Advice Letter No. 8-A, as worded, permits service to be offered "indiscriminately to unaffiliated groups". We feel that this is not the case. The advice letter provides reduced rates to multiple units where:

1. a single individual or entity has guaranteed the underlying bill, or
2. where a "corporation or other entity" has fulfilled various requirements relating to promoting the utility's service.

End users must be employees, officers or have a similar legal tie to the entity, and must be engaged in a "for profit basis" as the entity's main line of business.

Unaffiliated individuals, non-profit associations, or loose "affinity groups" would not qualify as a "corporation or other legal entity".

US West's Advice Letter No. 8-A is far more specific than any of the "corporate" or "bulk" rate tariffs which have been filed and approved for other cellular carriers in California. The existing tariffs of US West and PacTel Cellular are typical in that they say nothing about legal status, financial guarantees, or any of the other criteria which have now been set forth explicitly in the new filings.

The end users who qualify for the multiple unit rates will benefit by US West's Advice Letter No. 8-A in the sense that their monthly bill will be lower. This Commission is interested in creative pricing plans in the cellular marketplace that ultimately benefit the consumer. Advice Letter No. 8-A certainly does just that.

However, should it be brought to the Commission staff's attention that any of the conditions, stipulations, rates, terms, or provisions imposed by US West's Advice Letter No. 8-A are violated and offered to individuals, groups, or any other such entities that do not qualify for, and therefore should not receive the multiple unit discount, staff will then recommend that a hearing be held before this Commission in order to investigate the matter. If it considers that US West has violated any of the conditions, stipulations, rates, terms, or provisions set forth herein, Staff will recommend that any and all appropriate remedies, including fines, be imposed by the Commission.

FINDINGS

The Commission finds that the rates, terms, and conditions proposed in US West's Advice Letter No. 8-A (which supercedes Advice Letter No. 8) are appropriate and reasonable, and therefore good cause appearing dismisses without prejudice the protests of Mission Bell and CRA.

IT IS ORDERED that:

(1) Authority is granted to make US West's Advice Letter No. 8-A effective on March 8, 1989.

(2) The protests of Mission Bell and CRA are dismissed without prejudice.

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 March 8, 1989. The following Commissioners approved it:

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

Handwritten signature in cursive script, appearing to read "Victor S. ...".

Executive Director

