

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Advisory & Compliance Division  
Telecommunications Branch

RESOLUTION T-14026  
Date December 6, 1989

R E S O L U T I O N

RESOLUTION T-14026. Napa Cellular Telephone Company (U-3016-C); Los Angeles Cellular Telephone Company (U-3009-C); U S West Cellular of California, Inc. (U-3008-C). Approval of contracts for the provision of cellular telecommunications service to the California State Department of Transportation at less than tariffed rates.

BY ADVICE LETTER Nos. 12 and 12-A, 24, and 19 respectively, FILED ON October 12 and 13, 1989.

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SUMMARY

This resolution authorizes Napa Cellular Telephone Company (Napa), Los Angeles Cellular Telephone Company (LA), and U S West Cellular of California, Inc. (US West) to enter into an agreement with the California State Department of Transportation (Caltrans) to provide cellular telecommunications service at other than tariffed rates, pursuant to Commission General Order No. (G.O.) 96-A, Section X.A, "Contracts and Services at other than Filed Tariff Schedules: General Requirements and Procedure."

The contracts were filed with the Telecommunications Branch of the Commission Advisory and Compliance Division on October 12, 1989 (Napa), and October 13, 1989 (LA, US West), and served on competing and adjacent utilities. One protest was received from GTE Mobilnet of California Limited Partnership. The utilities have filed a joint response to the protest. We find a portion of the protest to have merit.

BACKGROUND

Contracts for the provision of cellular telecommunications (cellular) service to Caltrans was filed by Napa, LA and US West. Napa provides cellular service within the Napa-Fairfield-Vallejo Cellular Geographical Service Areas (CGSAs), LA provides cellular service within the Los Angeles CGSA, and US West provides cellular service within the San Diego CGSA. Services will be provided to Caltrans in accordance with each carrier's Retail Tariffs on file with the Commission and at prices specified in Schedule A attached to each contract.

### DISCUSSION

The prices and terms specified in Schedule A of each contract deviate from the prices and terms specified in each carrier's Retail Tariffs on file with the Commission. The estimated annual revenue effect of each contract is: \$900.00 for Napa, \$56,620.00 for LA, and \$6,900.00 for US West.

Each contract will be for an initial period of one year, with the terms applied monthly. In the event that each contract continues into effect after October 1, 1990, each utility will file an advice letter requesting Commission approval for each new contract. Each contract contains a provision which will entitle each utility to refund the difference between the proposed contract rate and the tariffed rate if Caltrans were to subscribe to service at the tariffed rates before this advice letter is approved.

### PROTESTS

A protest was received from GTE Mobilnet of California Limited Partnership (GTE) on October 27, 1989. GTE protested the advice letter for two reasons: (1) "neither the proposed contracts nor any relevant contract terms and conditions, including rates, have been provided" with the advice letters; and (2) "the request for retroactive application of the unidentified contract rate is an improper attempt to evade the Commission's notice requirements."

The utilities filed a joint response to the protest on November 3, 1989. In response to the first issue, the utilities point out that all advice letters filed with the Commission included copies of the contracts, each one containing all the terms and conditions of each utility's provision of service to Caltrans, including rates. In addition, the utilities point out that these contracts have been available at the Commission for review since the date of their filing, and that copies of the contracts were made available to others upon request.

In response to the second allegation, the utilities claim that the request for retroactive approval will not shorten the time for the Commission staff to review the contracts, nor will it evade the Commission's notice requirements. However, until the contracts are approved by the Commission, all terms and agreements in the contract are not valid. We find this issue in the protest to have merit.

### FINDINGS

With the exception of the provision where each utility will refund the difference between the proposed contract rate and tariffed rate if Caltrans were to subscribe to service at the tariffed rates before this advice letter is approved, the Commission finds the rates and terms of each contract to be reasonable. We find that approving refunds for service purchased prior to an approval of the contract may be considered

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retroactive ratemaking, from which we must refrain. We find this section of the protest to have merit.

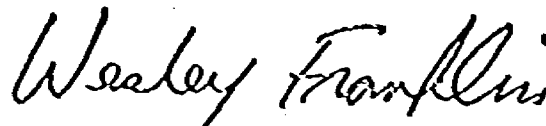
THEREFORE, IT IS ORDERED that:

The Contracts for Cellular Telecommunications Service with the California State Department of Transportation filed by Napa Cellular Telephone Company, Los Angeles Cellular Telephone Company, and U S West Cellular of California, Inc. on October 12 and 13, 1989, excluding the provision where each utility will refund the difference between the proposed contract rate and tariffed rate if Caltrans were to subscribe to service at the tariffed rates before this advice letter is approved, is made effective today.

Each utility will file a new contract with the Commission Advisory and Compliance Division within 30 days of this advice letter's adoption to contain the changes reflected in this order.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 6, 1989. The following Commissioners approved it:

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



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Wesley Franklin  
ACTING Executive Director