

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Advisory & Compliance Division  
Telecommunications BranchRESOLUTION T-14035  
Date January 9, 1990**R E S O L U T I O N**

RESOLUTION T-14035. Cagal Cellular Communications Corporation (U-3021-C). Approval of contract for the provision of cellular telecommunications service to the County of Sonoma at less than tariffed rates.

BY ADVICE LETTER No. 8, FILED ON November 2, 1989.

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**SUMMARY**

This resolution authorizes Cagal Cellular Communications Corporation (Cagal) to enter into an agreement with the County of Sonoma (Sonoma) 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 contract was filed with the Telecommunications Branch of the Commission Advisory and Compliance Division on November 2, 1989 and served on competing and adjacent utilities. One protest was received from GTE Mobilnet of California Limited Partnership. We find a portion of the protest to have merit.

**BACKGROUND**

A contract for the provision of cellular telecommunications (cellular) service to Sonoma was filed by Cagal. Cagal provides cellular service within the Santa Rosa Cellular Geographical Service Areas (CGSAs). Services will be provided to Sonoma in accordance with Cagal's Retail Tariffs on file with the Commission and at prices specified in Schedule A attached to the contract.

**DISCUSSION**

The prices and terms specified in Schedule A of each contract deviate from the prices and terms specified in Cagal's Retail Tariffs on file with the Commission. The proposed rates are derived from Cagal's wholesale rates. The estimated annual revenue effect of the contract is \$17,325.00.

Resolution T-14035  
January 9, 1990

The contract will be for an initial period of one year, and will be automatically renewed yearly for an additional one year term without notice, unless a written notice of one party's intention to terminate the contract is received by the other party no later than 30 days prior to the expiration of any one year period. In addition, the contract contains a provision which will entitle Cagal to refund the difference between the proposed contract rate and the tariffed rate if Sonoma 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 November 13, 1989. GTE protested the advice letter for two reasons: (1) "neither the proposed contract 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 utility did not respond to the protest, deferring instead to Commission Resolutions T-14016 and T-14026, adopted on November 22, 1989, and December 6, 1989 respectively. These Resolutions approved contracts several cellular telecommunications companies entered with the California State Department of Transportation (Caltrans) to offer cellular service at less than tariffed rates. These contracts were protested by GTE on the same grounds it protests the Sonoma contract.

Cagal's contract with Sonoma contains similar provisions offered in the Caltrans contracts, differing only in the renewal process. Wherein each Caltrans contract was for an initial period of one year, with the terms applied monthly, and contained a provision requesting Commission approval should each contract continue into effect after one year; Cagal's Sonoma contract offers an automatic yearly renewal provision. This provision gives both parties the capability to bypass any Commission investigation or review, should the contract be renewed in the future.

In reference to the provision where Cagal will refund the difference between the proposed contract rate and tariffed rate if the County of Sonoma were to subscribe to service at the tariffed rates before this advice letter is approved, the Commission found that approving refunds for service purchased prior to an approval of the contract may be considered retroactive ratemaking, therefore, rejecting this provision. (The Commission approved the Caltrans contracts except each contract's retroactivity provision in Resolutions T-14016 and T-14026).

FINDINGS

1. We find part of the protest to have merit.

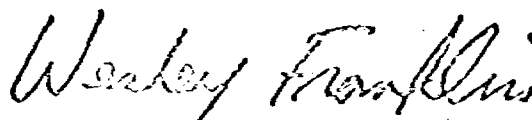
2. We also find that the utility seek commission approval should the contract be renewed.

THEREFORE, IT IS ORDERED that:

1. The Contract for Cellular Telecommunications Service with the County of Sonoma filed by Cagal Cellular Communications Corporation on November 2, 1989, excluding the provision that Cagal will refund the difference between the proposed contract rate and tariffed rate if County of Sonoma were to subscribe to service at the tariffed rates before this advice letter is approved, is made effective today.
2. In the event that the contract continues into effect after November 1, 1990, the utility will file an advice letter requesting Commission approval for a new contract.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 9, 1990. The following Commissioners approved it:

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



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Wesley Franklin  
Acting Executive Director

Commissioner Stanley W. Hulett,  
being necessarily absent, did  
not participate.