

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Advisory & Compliance Division
Telecommunications BranchRESOLUTION T-14036
Date January 9, 1990R E S O L U T I O N

RESOLUTION T-14036. Napa Cellular Telephone Company (U-3016-C). Approval of contract for the provision of cellular telecommunications service to the City of Vacaville at less than tariffed rates.

BY ADVICE LETTER No. 14, FILED ON November 16, 1989.

SUMMARY

This resolution authorizes Napa Cellular Telephone Company (Napa) to enter into an agreement with the City of Vacaville (Vacaville) 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 16, 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 Vacaville was filed by Napa. Napa provides cellular service within the Napa-Fairfield-Vallejo Cellular Geographical Service Areas (CGSAs). Services will be provided to Sonoma in accordance with Napa'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 Napa's Retail Tariffs on file with the Commission. The proposed rates are derived from Napa's wholesale rates. The estimated annual revenue effect of the contract is \$2,000.00.

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 Napa to refund the difference between the proposed contract rate and the tariffed rate if Vacaville 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 21, 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."

Napa filed a response to the protest on December 1, 1989. In response to the first issue, Napa points out that Advice Letter No. 14 filed with the Commission included copies of the contract, which contained all the terms and conditions of Napa's provision of service to Vacaville, including rates. The utility further points out that there is no requirement in Section X.A of Commission General Order 96-A to serve the contract to those on the service list. Also, the Advice Letter did state in underlined text: "Any person requesting a copy of the contract may call Napa Cellular and request a copy of the contract by mail or may view a copy of the contract either at Napa Cellular's main business office or at the CPUC."

In response to the second allegation, Napa defers to the to Commission Resolution T-14016 adopted on November 22, 1989. This Resolution 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 Vacaville contract.

In reference to the provision where Napa will refund the difference between the proposed contract rate and tariffed rate if the City of Vacaville 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.

Napa's contract with Vacaville contains similar provisions offered in the Caltrans contracts. It differs in Napa's renewal process. Wherein the Caltrans contract was for an initial period of one year, with the terms applied monthly, and that it sought Commission approval should each contract continue into

effect after one year; Napa is offering an automatic yearly renewal provision in its Vacaville contract. This provision gives both parties the capability to bypass any Commission investigation or review in the future, should the contract be renewed.

FINDINGS

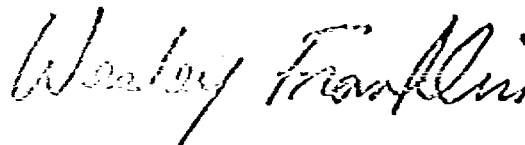
1. We find a section of the protest to have merit.
2. We also find that the utility seek commission approval should the contract be renewed.

THEREFORE, IT IS ORDERED that:

1. The Contract for Cellular Telecommunications Service with the City of Vacaville filed by Napa Cellular Telephone Company on November 16, 1989, excluding the provision that Napa will refund the difference between the proposed contract rate and tariffed rate if City of Vacaville 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



Wesley Franklin
Acting Executive Director

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