

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Advisory and Compliance Division RESOLUTION T- 14392
Telecommunications Branch May 8, 1991

R E S O L U T I O N

RESOLUTION T-14392. LOS ANGELES CELLULAR TELEPHONE COMPANY. REQUEST AUTHORITY TO OFFER UP TO \$100 IN BILLING CREDITS TO NEW CUSTOMERS AND TO FINANCE SUCH CREDITS THROUGH THE UTILITY'S GIFT CERTIFICATE PROGRAM.

BY ADVICE LETTER NO. 107, FILED ON MARCH 14, 1991.

SUMMARY

This Resolution rejects Los Angeles Cellular Telephone Company's (LACTC) Advice Letter No. 107, filed on March 14, 1991. In that Advice Letter, LACTC seeks Commission authorization to offer up to \$100 in billing credits to new customers and provides resellers with an incentive for enrolling new customers as set forth in Schedule 2-T of its tariffs. A protest was filed by Los Angeles SMSA Limited Partnership on April 3, 1991 and LACTC responded to the protest on April 9, 1991. After reviewing both documents, we find the protest to have merit.

For the reasons discussed herein, and issues discussed in the protest, we find the request unclear and potentially discriminatory and in violation of (D.) 90-06-025, and it therefore, should be rejected.

BACKGROUND

LACTC is a facilities-based cellular radiotelecommunications carrier which provides service in the Los Angeles Metropolitan Service Area (MSA). LACTC was granted temporary tariff authority in Resolution T-14336 dated March 13, 1991 as requested by Advice Letter No. 93, filed on January 24, 1991. This authority allows LACTC to make temporary tariff filings for reductions of up to ten percent (10%) of its average customer monthly bill.

Temporary tariff authority is authorized by Commission Decision

May 8, 1991

D. 90-06-025¹, as modified by D. 90-10-047 as a mechanism for cellular utilities to exercise downward pricing flexibility. Temporary tariff filings are made effective on the date filed under temporary status and become permanent if no protests are received after the statutory 20-day protest period. Ordering Paragraph 8(b)(1) of D.90-06-025 states:

- (1) "Absent any protest to the tariff within the statutory 20-day protest period, the temporary status of the tariff shall expire and it shall be classified as a permanent tariff pursuant to the terms of the tariff provisions."

If a protest is filed, the tariff remains temporary until the protest is resolved. O.P. 8(b)(2) of D.90-06-025, as modified by D. 90-10-047, states:

- (2) "If a protest is filed, the tariff shall remain a temporary tariff until the protest has been resolved or by order of the Commission; if, within six months of the filing of the temporary tariff, no resolution takes place and the Commission does not act, the protest shall be deemed denied and the tariff shall be classified as a permanent tariff pursuant to the terms of the tariff provisions."

On March 14, 1991, LACTC filed Advice Letter No. 107 under its temporary tariff authority. In this Advice Letter, LACTC proposes to add the following provision to its General Rules, Schedule No. 2-T, Sheet 12:

- D. "Upon request the Company will sell gift certificates in the amounts of \$25, \$50 and \$100. These may be applied to Company's billings on a dollar-for-dollar basis. Company's sales representatives may purchase such certificates and may present them in amounts not exceeding \$100 per customer to new customers (defined as a subscriber activating service who has not been on Company's service during the previous ninety days) for use as credits against service billings."

PROTESTS

Los Angeles SMSA Limited Partnership (LASMSA), the other facilities-based carrier in the Los Angeles MSA, filed a protest on April 3, 1991. This protest was filed within the 20-day period specified under G.O. 96(a). The issues raised in the protest are summarized below:

¹ D.90-06-025, dated June 6, 1990, as modified by D.90-10-047 on October 12, 1990 established the Commission's regulatory framework for cellular radiotelecommunications utilities.

May 8, 1991

1. An LACTC agent was promoting the gift certificates, an indication that LACTC's agents were included in the definition of the phrase "sales representative." This amounts to the payment by LACTC's agents of a portion of a customer's cellular service charges, a clear violation of ordering paragraph 16.a. of D. 90-06-025.
2. The certificate program discriminates among LACTC's new customers in an arbitrary and unfair manner. New customers could be offered certificates in varying amounts without any basis for the difference. This would violate Section 453(a) of the PU code in that those receiving the certificates (or those receiving certificates in larger amounts) would receive an "unfair preference or advantage."
3. The proposed certificate program is described in an ambiguous manner in the Advice Letter. Specific examples are as follows:
 - a. It does not specify how much sales representatives would pay to purchase the certificates.
 - b. The tariff language would be in the Rules section. It does not specify if it would apply to new customers who are resellers as well as to new retail customers.
 - c. It does not specify when the certificates would expire.

LACTC responded to the protest in a letter dated April 9, 1991. This response was within the five workdays set under G.O. 96(a). Following is a summary of the major points raised in the response:

1. LASMSA's claim of discrimination is belated, based on the fact that LACTC's gift certificate policy was established by Advice Letter No. 32, filed on May 24, 1990, which was not protested. Advice Letter No. 32 established a means whereby third parties might pay for cellular service used by others.
2. LACTC will bill end users at fully tariffed rates. While the customer may receive a gift certificate in partial payment of a bill for service, the certificate must have been fully-paid for on a dollar-for-dollar basis. Thus, there is no question that LACTC is offering a non-tariffed rebate or refund.
3. Advice Letter No. 107 does not change the essential nature of the gift certificate program established under Advice Letter No. 32.
4. LASMSA's claim of discrimination under Section 453(a) of the PU Code is without substance. The "unfair preference or advantage" prohibited by Section 453(a)

May 8, 1991

- is aimed at acts of discrimination by a public utility, not private citizens.
5. Any gift certificate program could be seen to be discriminatory, since not every customer would have a benefactor and not all benefactors would give gift certificates of equal value.
 6. It is inappropriate to rely on Ordering Paragraph 16 (a) from D. 90-06-025 to determine that it is not appropriate for agents to give gift certificates to new customers because O.P. 16 (a) is lifted verbatim from stipulated language in D. 86-12-023 and which relates specifically to non-tariffed bundling of cellular equipment and service. It is the intent of O.P. 16 (a) to prohibit carriers or their agents from granting non-tariffed discounts and bundles. LASMSA has alleged no bundling. In fact, the certificates in question are made available to new service customers, to be applied to service billings, regardless of whether or not equipment is purchased.
 7. Since the gift certificate program is tariffed under Advice Letters 32 and 107, P U Code Section 532, which is addressed to non-tariffed discounts and bundles, does not apply.
 8. LASMSA's protest is contrary to the public interest. There are many situations where cellular gift certificates perform entirely legitimate functions.

DISCUSSION

While the gift certificate program was originally established through LACTC's Advice Letter No. 32, the use of that plan has changed radically in Advice Letter No. 107. Gift certificates are a common aspect of retail sales, but in Advice Letter No. 107 they are being used as a marketing tool.

The proposed language in LACTC's Advice Letter No. 107 is vague and allows for potentially discriminatory practices. We object to the vagueness surrounding which customers would receive the certificates and in what amounts. Conceivably Customer A could receive a certificate for \$25.00 from an agent while Customer B receives a certificate for \$100, and Customer C receives no certificate. It is unclear what criteria would be used to determine the amount of the certificate, if any, that particular customers would receive. We are concerned that the proposed certificates will not be made available to customers in a fair and nondiscriminatory manner. Such practice violates Public Utilities Code Section 453 (a) which states:

"No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice, or disadvantage."

May 8, 1991

Advice Letter 107 allows Company "sales representatives" to purchase gift certificates to be presented to new customers, to be credited against tariffed service charges. In spite of LACTC's assertion that its agents should be viewed as "private citizens," LACTC's sales representatives or agents are representatives of the utility, not private citizens. This is a far different arena from the example of a parent buying a certificate for a son or daughter or a real estate broker sharing the costs of cellular service with its agents. Those situations described in LACTC's response are indeed private in nature, whereas the utility/customer relationship does exist when we are dealing with LACTC's agents and new customers.

LACTC makes it clear that its "sales representatives" indicated in Advice Letter No. 107 pay full price for the gift certificates. However, regardless of the amount agents pay for the gift certificates, the agents are giving them to new customers to defray a portion of future service bills. Having agents pay a portion of a customer's service charges violates D.90-06-025, ordering paragraph 16 (a) which reads as follows:

"No provider of cellular telephone service may provide, cause to be provided, or permit any agent or dealer or other person or entity subject to its control to provide cellular telephone service at any rate other than such provider's tariffed rate. No such provider may permit any agent or dealer or other person or entity subject to its control to pay for all or any portion of the cellular service which it provides to any customer."

The language in O.P. 16 (a) is quite clear. LACTC's actions in using its existing gift certificate program as a mechanism for agents to pay a portion of a new customer's service bill must be viewed by this Commission as disregarding the provisions of D. 90-06-025. LACTC is hereby reminded that the Commission has the authority to levy fines for violations of Commission orders and intends to exercise that authority if LACTC violates O.P. 16 (a) again.

LACTC is reminded that the correct procedure for attempting to change O.P. 16 (a), or any Commission decision, is to file a Petition for Modification in accordance with Rule 43 of the Commission's Rules of Practice and Procedure.

LACTC is mistaken as to the focus of D. 86-12-023, California Resellers Association vs. GTE Mobilnet. That complaint arose from GTE Mobilnet's agents offering TV sets in return for signing up for service with GTE Mobilnet. One advertisement cited in the complaint reads as follows: "When you buy a phone, you get more than just a receipt. We'll give you a 19" Panasonic color T.V., valued at \$319, free, when you sign up for GTE Mobilnet cellular service." The focus of this case was on the TV in exchange for activation, with the required purchase of the telephone as incidental. Bundling of equipment and service was one issue in the complaint, however giving customers an offset against the price of the service was also at issue. Thus, O.P. 16 (a) of D. 90-06-025 does apply in this case and

May 8, 1991

would clearly prohibit agents from paying any portion of a customer's service bills with a gift certificate.

The Commission has underscored repeatedly its support for measures to encourage competition in California's cellular telephone industry. However, the gift certificate program presented by LACTC in Advice Letter No. 107 is not the proper way to foster competition in the industry. There are any number of promotional offerings a company could make which would not violate Commission decisions.

The gift certificate program, filed as it was under temporary tariff authority, went into effect on March 14, 1991, the day of the filing. LACTC's agents have been free to provide those certificates to new customers for almost two months, in spite of the fact that the offering clearly violates D. 90-06-025. The Commission implemented the concept of the temporary tariff authority in D. 90-06-025 in an attempt to foster competition in the industry and is dismayed to see it misused in this manner. Moreover, we do not consider advice letters extending the Extended Term Service Program to be effective until the concerns we raise herein regarding compliance with D.90-06-025 and violations of Section 453 (a) are addressed.

For the above reasons, we find LACTC's Advice Letter No. 107 to be vague, unclear and potentially discriminatory and in violation of D. 90-06-025, and that it should be rejected. LASMSA's motion to reject LACTC's Advice Letter No. 107 is therefore granted.

FINDINGS

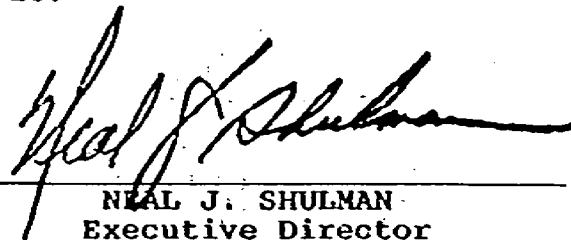
1. The proposed language does not contain clear and adequate guidelines to determine the amount of a certificate (if any) that a new customer would receive.
2. Under the current regulation of facilities-based cellular telephone companies, the certificate system sought by LACTC's Advice Letter No. 107 is unclear and potentially discriminatory.
3. LACTC's sales representatives are currently offering gift certificates as a rebate against service.
4. LACTC's Advice Letter No. 107 is a misuse of the temporary tariff authority granted to LACTC by the Commission.
5. LACTC can be subject to a fine if it violates O.P. 16 (a).
6. LACTC's Advice Letter No. 107 violates Public Utilities Code Section 453.
7. LACTC's Advice Letter No. 107 violates Commission Decision 90-06-025, ordering paragraph 16 (a) and should be rejected.

May 8, 1991

THEREFORE, IT IS ORDERED that:

1. Los Angeles Cellular Telephone Company's Advice Letter No. 107 is rejected.
2. The accompanying tariff sheets to Advice Letter No. 107 have been rejected, and the Commission will return a complete set of rejected tariff sheets to Los Angeles Cellular Telephone Company with a copy of this Resolution.
3. Rejected tariff sheets shall be retained in the utility's file of cancelled and superseded sheets.
4. Sheet numbers and the Advice Letter number of the rejected filing shall not be reused.
5. The temporary tariff described in Advice Letter No. 107 is rescinded and shall not be made permanent.
6. Los Angeles Cellular Telephone Company shall order its agents to cease and desist from offering gift certificates as rebates for service.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 8, 1991. The following Commissioners approved it:


NEAL J. SHULMAN
Executive Director

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSIER
NORMAN D. SHUMWAY
Commissioners