PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-14607
September 25, 1991

RESOLUTION

RESOLUTION T-14607. US WEST CELLULAR OF CALIFORNIA, INC. ORDER REGARDING US WEST'S TEMPORARY TARIFF FILING TO INTRODUCE A PROMOTIONAL "CASH BACK" OFFER TO WHOLESALE AND RETAIL CUSTOMERS.

BY ADVICE LETTER NO. 48, FILED ON JUNE 21, 1991.

SUMMARY

US WEST Cellular of California, Inc. (USWC), by Advice Letter No. 48, filed June 21, 1991 under temporary tariff authority, introduced a promotional "cash back" offer to wholesale and retail customers. This advice letter implemented the following:

1. For new subscribers or current customers requesting additional lines of service between June 21, 1991 and September 30, 1991, a $400 check or credit to their account will be provided after 36 months of uninterrupted service.

2. For resellers who sign up new subscribers or current customers requiring additional lines of service between June 21, 1991 and September 30, 1991, a $110.27 credit for each activation will be provided if the service remains active for a miminum of 120 days.

The Cellular Resellers Association, Inc. (CRA) filed a protest to Advice Letter No. 48 on June 28, 1991. USWC filed its response to CRA's protest on July 3, 1991. The protest claimed that USWC had reduced margins in violation of Ordering Paragraph 15 of Commission Decision (D.) No. 90-06-025. This Resolution grants the protest and suspends the tariff.

BACKGROUND

U S WEST Cellular of California, Inc. (USWC), by Advice Letter No. 48, filed June 21, 1991 under temporary tariff authority, promoted a "cash back" offering available to wholesale and retail customers for the period June 21, 1991 through September 30, 1991. In this promotion, a new retail subscriber or a current customer signing for additional lines of service (provided that such service remains active for a period of 36 months), will receive a $400 check or a credit to their account after the 36th month. Resellers who sign up new customers or a current customer signing for additional lines of service (provided that such service remains active for a minimum of 120 days), will receive a credit in the amount of $110.27 after the 120th day. The $110.27 amount was calculated based on the present value of $400.00 and USWC's customer disconnect rate over a period of 36 months.

USWC filed the tariff as a "temporary tariff" stating that the offering will result in less than a 10% decrease in the company's average retail customer bill, and thus can be made effective on the date filed pursuant to their tariff Rule No. 15, Temporary Tariff Authority, as authorized by Resolution T-14267, dated January 15, 1991.

D.90-06-025, as modified by D.90-10-047 states that:

(1) Absent any protest to the tariff filing 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.

(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.

This decision provides that temporary tariffs be used only for rate decreases and cannot be used to reduce the current margins between wholesale and retail rates. Carriers may file temporary tariffs for promotional offerings with a set expiration date; the expiration of such a tariff will not require additional approval.

NOTICE/PROTESTS

Public notice that USWC filed Advice Letter No. 48 to introduce the promotional "Cash Back" appeared in the California Public Utilities Commission's June 25, 1991 Daily Calendar. In addition, copies of USWC's Advice Letter No. 48 were mailed to competing utilities, adjacent utilities, and known interested parties in accordance with General Order (G.O.) No. 96-A, Section III.G.

On June 28, 1991, CRA protested USWC's Advice Letter No. 48 on the grounds that it will cause unlawful reductions in the retail margin and inhibit retail-level competition, thus violating D.90-06-025 and Sections 453 and 532 of the Public Utilities Code (PU Code).

CRA's protest is summarized as follows:

- The $400 cash rebate to any new retail customer after 36 months of uninterrupted service and the $110.27 wholesale rebate after 120 days of service do not allow the reseller to compete effectively.

- Advice Letter No. 48 violates Ordering Paragraph No. 15 of D.90-06-025 because it creates a reduction in the current margins between wholesale and retail rates.

USWC responded to CRA's protest on July 3, 1991. The response is summarized below:

- The promotional offering is a plan to attack the continuing problem of customer churn, by providing a rate incentive to keep the customers in service for 36 months.

- USWC assumed a 3% per month disconnect rate. This assumption results in 33.4% of the new customers being eligible for the $400 credit after 36 months. USWC believes that the disconnect rate experienced by the resellers for new customers will be the same rate that USWC expects for its new retail customers.

- If resellers were to place $110.27 in a 7% bank account for each new number activation during the promotion period, it would have a fund after 36 months sufficient to pay $400 credit to the remaining customers.

- The reseller does not have to match USWC's retail offer; he can keep the $110.27 or use it to support decreases in current monthly rates. If the reseller chooses not to match USWC, he is $110.27 ahead of the game for every new number activation during the promotion period.

- CRA's protest is without merit and should be rejected.

USWC claims that based on the proposed cash back amounts, the margin between wholesale and retail does not decrease. On the other hand, CRA claims that in order to match USWC's offer, a reseller would have to provide the $400 rebate to each retail subscriber receiving service for 36 months. After the $110.27 wholesale rebate from USWC, the reseller loses $289.73 for each such subscriber, or $8.05 per month of service. San Diego Cellular Communications, Inc. a reseller that would be affected by USWC's proposed revisions maintains that the $110.27 would have to earn an interest rate of 25.99% compounded annually to break even at the 1.47% monthly churn rate it experiences.

DISCUSSION

One of the issues before the Commission is whether a $110.27 wholesale rebate (which was arrived at by getting the present value of $400 at an assumed percentage cost of capital and a calculated disconnect rate over 36 months) is at least equivalent to the $400 retail rebate to ensure there is no margin reduction.

In order not to deviate from the current mandatory retail margin pursuant to D.90-06-025, churn rates for USWC's resellers would have to be reasonably uniform, constant, and predictable to assure no margin reduction. Yet it is obvious that future churn rates and disconnect rates cannot be predicted. Even if they could be predicted, there is no evidence to assume what if any, correlation exists between the number of customers completing 36 months of uninterrupted service and the churn rate. And based on CACD's file on temporary tariff authority, it is evident that churn rates vary considerably between USWC and its resellers. To further point out the dispersion, Finding of Fact No. 130 in D.90-06-025 states that resellers churn rates range from a low of 2 percent to a high of 35%. Resellers with different churn rates will be affected differently.

There are other problems in the assumptions USWC uses in its analysis. One is that USWC uses its own historic 3% disconnect rate, which does not take into account any future reduction in disconnect rates due to the plan, although it insists that reduction of the disconnect rate is a primary reason for the plan. Another is USWC's argument that placing the $110.27 in a 7% bank account for each new number activation during the promotion period will generate sufficient funds after 32 months to pay a $400 credit to the remaining customers. This presumes that the reseller gets $110.27 for each new activation. However, the disconnection rate during the first four months should be considered in computing the resellers' rebate. Each customer who discontinues service within the 120-day period means $110.27 less for the reseller.

Since any deviation from USWC's assumptions will create a change in the retail margin, Advice Letter No. 48 does not fall within the intent of D.90-06-025 for advice letters which can be filed under temporary tariff authority. D.90-06-025 requires that until a revised USOA is put in place by further Commission decision, carriers shall not use temporary tariffs to make rate changes that reduce the current margins between wholesale and retail rates. Rate changes, as described/discussed in D.90-06-025 include rules, regulations, and other provisions necessary to offer service to end users. Advice Letter No. 48, filed under temporary tariff authority will therefore be suspended.

Resolution T-14267 which granted USWC temporary tariff authority clearly states in its Ordering Paragraph No. 4 that:

> "U S West Cellular of California shall not use temporary tariffs to make rate changes that reduce the current margins between wholesale and retail rates until a revised USOA is put in place by further Commission decision."

Ordering Paragraph No. 15 of D.90-06-025 states that individual facilities-based carriers shall not deviate from the current mandatory retail margin until cost-allocation methods are adopted and implemented as part of the cellular USOA, unless they can demonstrate through an advice letter filing that the retail operation will continue to operate on a break-even or better basis with proposed rate changes that impact the mandatory retail margin.

Until recently the Commission has not been faced with controversial advice letters involving reductions in margin. That is primarily because the facilities-based carriers always adjusted their wholesale rate elements by the same amount as the adjustments in their retail rate elements.

In Ordering Pargraph 15 of D.90-06-025, noted above, the Commission did allow the utility to reduce margins using the regular advice letter process, if the company can demonstrate that the retail operation will continue to operate at a break-even or better basis with retail rate changes.

Another issue raised by Advice Letter No. 48 concerns nominal value. Ordering Paragraph 16.b, as amended by D.90-10-047 reads as follows:

> "No provider of cellular telephone service may provide, either directly or indirectly any gift of any article or service of more than nominal value (e.g., permitted gifts could be pens, key chains, maps, calendars) to any customer or potential customer in connection with the provision of cellular telephone service."

USWC's Advice Letter No. 48 offers a $400 cash rebate or account credit in connection with new service or additions to existing service. Although this offering appears to be a reward to the customer for staying in the system for three years, it is still an offering conditioned on the signing up for service. In view of this, $400 appears to be an excessive amount which does not fall within the context of "nominal" value. The manner in which "nominal" was used in D.90-06-025 implies that only a gift of insignificant value is permissible.

USWC is therefore providing a $400 cash rebate offering which in the minds of most parties would not be considered nominal. No dollar amount was ever placed on nominal value and there seems to be an increasing disparity between parties as to what this means. To eliminate the problem, we will request the Administrative Law Judge in the Cellular Phase III proceeding to look into the matter of setting a dollar cap in reference to the definition of "nominal". Until then, we will put the industry on notice that the following rules shall apply to each individual advice letter filed:

1. The provision of gift, cash, or any article shall not exceed a retail value of $25.

2. The provision of credit to an account for service (e.g., free air time usage, waivers, promotions or special service offerings) shall not exceed $100.

FINDINGS

1. USWC's Advice Letter No. 48 filed under temporary tariff authority violates D.90-06-025. A temporary tariff filing is not the appropriate vehicle to promote an offering that will reduce the current margins between wholesale and retail rates.

2. Ordering Paragraph 15 of D.90-06-025 provides that "individual facilities-based carriers shall not deviate from the current mandatory retail margin unitl cost-allocation methods are adopted and implemented as part of the cellular USOA unless they can demonstrate through an advice letter filing that the retail operation will continue to operate on a break-even or better basis with proposed rate changes that impact the mandatory retail margin."

3. Ordering Paragraph No. 4 of Resolution T-14267 prohibits USWC from using temporary tariffs to make rate changes that reduce the current margins between wholesale and retail rates until a revised USOA is put in place. Rate changes as used in D.90-06-025 includes rules, regulations, and other provisions necessary to offer service to end users.

4. In the interim until the USOA is in place, it is not permissible to make rate changes that reduce the current margins between wholesale and retail rates either under temporary tariff authority or regular advice letter.

5. Because of the difficulties of CACD in verifying compliance with Ordering Paragraph 15 of D.90-06-025, all reductions in retail rate elements should have an equal reduction to the same wholesale rate element until the USOA system is in place.

6. USWC's Advice Letter No. 48 violates Ordering Paragraph 16.b of D.90-06-025, as modified by D.90-10-047 by providing a rebate of greater than nominal value.

7. Prior to the placement of the cellular USOA, the "nominal" value that is attached to a gift, cash or any article in connection with the provision of cellular service should not exceed $25; and credit to account through free air time usage, waivers, promotions or special service offerings in connection with the provision of the same cellular service should not exceed $100.

THEREFORE, IT IS ORDERED that:

1. Advice Letter No. 48, filed under temporary tariff authority, is suspended.

2. Until the USOA is in place, a reduction in any retail rate element shall have an equal reduction to the same wholesale rate element.

3. Until the USOA is in place, the value of a gift, cash or any article shall not exceed $25. Credit to account through free air time usage, waivers, promotions, or special service offerings should not exceed $100.

4. The protest of the Cellular Resellers Association, Inc. is granted.

5. The "cash back" offer due to expire September 30, 1991 shall be suspended effective September 25, 1991.

6. US WEST Cellular of California, Inc. is reminded to observe the mandates of Resolution T-14267.

The effective date of this Resolution is today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on September 25, 1991. The following Commissioners approved it:

Neal J. Shulman

NEAL J. SHULMAN
Executive Director

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain

G. MITCHELL WILK
Commissioner