PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-14608
September 25, 1991

RESOLUTION

RESOLUTION T-14608. US WEST CELLULAR OF CALIFORNIA, INC. ORDER REGARDING US WEST'S TEMPORARY TARIFF FILING TO MODIFY ITS RETAIL BASIC SERVICE RATES, INTRODUCE A RETAIL ANNUAL AGREEMENT SERVICE, AND REDUCE ITS WHOLESALE ANNUAL AGREEMENT ACCESS CHARGE.

BY ADVICE LETTER NO. 49, FILED ON JULY 8, 1991.

SUMMARY

US WEST Cellular of California, Inc. (USWC), by Advice Letter No. 49, filed July 8, 1991 under temporary tariff authority implemented the following:

1. A revised Retail Monthly Basic Service Plan with reductions in some peak hour and off-peak hour usage rates, ranging from \$0.002 to \$0.0323 per minute; and increases in four peak hour usage rates in the 181 minutes and above category, ranging from \$0.0022 to \$0.01 per minute;

2. A new Retail Annual Agreement Service almost identical to the usage rates of the Retail Monthly Basic Service Plan except for reductions in the 101-180 minutes of use category for both peak and off-peak hours;

3. A reduction in the monthly access charge for the Wholesale Annual Contract Service by \$2.43 to maintain margin requirements as required by Commission Decision (D.) 90-06-025.

San Diego Cellular Communications, Inc. (SDCC) filed a protest to Advice Letter No. 49 on July 16, 1991. The Cellular Resellers Association, Inc. (CRA) filed a protest July 19, 1991. USWC filed its response to both protests on August 2, 1991. SDCC and CRA claimed that USWC had reduced margins in violation of Ordering Paragraph 15 of D.90-06-025. This Resolution grants the protests and suspends the tariff.

BACKGROUND

U S WEST Cellular of California, Inc. (USWC), by Advice Letter No. 49, filed July 16, 1991 under temporary tariff authority, modified several pricing plans to meet competition. The usage rate changes are as follows:

1. Retail Monthly Basic Service Usage Charges

A. Present

No. of Units	Peak First 180 Mins.	Peak Over 180 Mins.	Off-Peak
1	.4000	.3500	.2000
2- 7	.3880	.3395	.1940
8-23	.3800	.3325	.1900
24-49	.3740	.3272	.1870
50 +	.3700	.3237	.1850

B. Proposed

No. of Units	Peak 0-100 mins.	Peak 101-180	Peak 181 +	Off-Peak 0-100 mins.	Off-Peak 101-180	Off-Peak 181 +
1	.4000	.3800	.3600*	.2000	.1900	.1800
2- 7	.3880	.3686	.3492*	.1940	.1843	.1746
8-23	.3660	.3477	.3294	.1830	.17385	.1647
24-49	.3660	.3477	.3294*	.1830	.17385	.1647
50 +	.3660	.3477	.3294*	.1830	.17385	.1647

* signifies rate increase

2. New Retail Annual Agreement Plan Usage Charges

No. of Units	Peak 0-100 mins.	Peak 101-180	Peak 181 +	Off-Peak 0-100 mins.	Off-Peak 101-180	Off-Peak 181 +
1	.4000	.3700	.3600	.2000	.1850	.1800
2- 7	.3880	.3589	.3492	.1940	.17945	.1746
8-23	.3660	.33855	.3294	.1830	.169275	.1647
24-49	.3660	.33855	.3294	.1830	.169275	.1647
50 +	.3660	.33855	.3294	.1830	.169275	.1647

3. Wholesale Annual Contract Service Access Charges

	Present	Proposed
Total Access Nos. 100 or less	$26.60	$26.60
Total Access Nos. over 100	24.60	22.17

To maintain the margin requirements, USWC reduced one element in the wholesale access. There were no changes in the wholesale usage charges, peak or off-peak.

USWC filed the tariff as a "temporary tariff" since 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 the wholesale and retail rates or for price increases. 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. 49 to modify several pricing plans appeared in the California Public Utilities Commission's July 9, 1991 Daily Calendar. In addition, copies of USWC's Advice Letter No. 49 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 July 16, 1991, SDCC protested USWC's Advice Letter No. 49 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).

SDCC's main arguments are presented below:

1. The reduction in retail margin is evident as shown in the following illustrative examples for both USWC's Monthly Program and Annual Agreement Plan:

Present Monthly Plan:
(Using 200 minutes/month example; small reseller)

1 Unit		8-23 Units	
Access Charge	$ 35.00	Access Charge	$ 30.00
Usage Charge			
Peak 180 mins. x .4000	72.00	Peak 180 x .38	68.40
Off-Peak 20 mins. x .2000	4.00	Off-Peak 20 x .19	3.80
Total Revenue	$111.00	Total Revenue	$102.20
Cost	$ 89.02	Cost	$ 89.02
Margin	$ 21.98	Margin	$ 13.18
	24.7%		14.8%

Proposed Monthly Plan:

1 Unit		8-23 Units	
Access Charge	$ 35.00	Access Charge	$ 30.00
Usage Charge			
Peak 180 mins. x .3600	64.80	Peak 180 x .3294	59.29
Off-Peak 20 mins. x .1800	3.60	Off-Peak 20 x .1647	3.29
Total Revenue	$103.40	Total Revenue	$ 92.58
Cost	$ 89.02	Cost	$ 89.02
Margin	$ 14.38	Margin	$ 3.36
	16.2%		3.8%

In the above monthly examples, the margin decrease for 1 unit (from $21.98 to $14.38) is 35% and for 8-23 units (from $13.18 to $3.36) is 75%.

Proposed Retail Annual Plan:

1 Unit		8-23 Units	
Access Charge	$ 35.00	Access Charge	$ 30.00
Usage Charge			
Peak 180 x .36 x .95	61.56	Peak 180 x .3294 x .95	56.33
Off-Peak 20 x .18 x .95	3.42	Off-Peak 20 x.1647 x.95	3.13
Total Revenue	$ 99.98	Total Revenue	$ 89.46
Cost	$ 89.02	Cost	$ 89.02
Margin	$ 10.96	Margin	$ .44
	12.3%		0.5%

The new retail annual plan, being a more economical plan will lower the retail margin further. Any customer switching from the monthly to the annual plan will bring about a reduction in the reseller's margin.

Advice Letter No. 49 violates Ordering Paragraph No. 15 of D.90-06-025 because it creates a reduction in the current margin between wholesale and retail rates.

2. Since USWC's Advice Letter No. 49 affects the retail margin, it violates D.90-06-025 which states that retail divisions of carriers be compensatory. In the five years of USWC's operation, the retail division has lost no less than 3 million dollars per year. USWC's retail operation ended 1990 with a loss of $3,179,622. Any reduction in the retail margin will simply increase the losses.

CRA joined SDCC's protest and reiterated that USWC's Advice Letter No. 49 will cause substantial reductions in the retail margin and again pointed out that USWC's retail arm is presently operating in a noncompensatory fashion.

Claiming that they received the protests on an untimely basis, USWC responded to the protests on August 2, 1991. They indicated that the changes which basically grant discounts to retail customers via a cumulative airtime and a third airtime tier for annual customers maintained the existing margin since there is a corresponding reduction in the wholesale access charge for annual customers. USWC presented computations with assumptions made in connection with Advice Letter No. 49.

DISCUSSION

SDCC and CRA presented the effects of USWC's Advice Letter No. 49 on the margin by using as samples a 1-unit customer and a subscriber falling in the 8-23 units category. On the other hand, USWC submitted under the provisions of G.O. 66-C a different set of assumptions used in the revenue calculations for Advice Letter No. 49. The assumptions included the percentage of customers who will accept the standard basic monthly service; the percentage of customers who will accept the new annual agreement; and the percentage of wholesale customers who will accept the new annual agreement.

In spite of USWC's assumptions in calculating revenue, we still find validity in SDCC's and CRA's presentation that a change in margin will occur as a result of USWC's Advice Letter No. 49. We also find that any variance in USWC's assumptions can create a reduction in the current retail margin. USWC's claim that modification of one element in the wholesale access charge equalizes modifications in the retail usage rates is not reasonable. Rate changes involving different elements (e.g., retail usage charge versus wholesale access charge) could become contentious. Further, a usage rate is based on the number of minutes used, while an access charge is based on the number of access numbers ordered.

Recognizing that any deviation from USWC's assumptions will create a change in the retail margin, Advice Letter No. 49 does not fall within the intent of D.90-06-025 for advice letters to be filed under temporary tariff authority. D.90-06-025 states 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 discussed in D.90-06-025 include rules, regulations, and other provisions necessary to offer service to end users. Advice Letter No. 49 filed under temporary tariff authority is therefore suspended.

Resolution T-14627 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 mandates that individual facilities-based carriers shall not deviate from the current 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. Recent innovative plans from the industry, however, have started deviating from that practice, which makes it extremely difficult for the Commission and its staff to evaluate the validity of protests alleging reductions in margin without going to hearing.

All these problems regarding reductions in margins will be eliminated shortly with the issuance of the USOA decision. Until that time, the facilities-based carriers are put on notice that all reductions in retail rate elements shall have an equal reduction to the corresponding wholesale rate elements.

Another issue raised by Advice Letter No. 49 is that it also requests a rate increase. USWC raised usage rates which, even with the reductions in other rates, could result in rate increases for individual customers.

USWC in raising rates has failed to comply with Ordering Paragraph 9 of D.90-06-025 which states that:

> A cellular carrier seeking an increase in rates shall substantiate its request in an advice letter filing and shall provide:
>
> a. Market studies based specifically on data within its respective MSA.
>
> b. Actual return on investment data for its prior 3 calendar years.
>
> c. Projected return on investment based on its proporsed rates.
>
> d. Explanation of any major change (50 basis points) in the projected return on investment over the prior 3-year recoreded average.
>
> e. Cost-support data as requested by Commission staff.

Advice Letter No. 49 incorporated rate reductions and rate increases in some elements, which places the filing in a contentious situation. This is not allowed under temporary tariff authority. Any series of increases and decreases in a new plan which could result in an increase to customers should comply with Ordering Paragraph 9 of D.90-06-025.

FINDINGS

1. USWC's Advice Letter No. 49 will cause a reduction in its retail margins. 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 No. 4 of Resolution T-14267 prohibits USWC to 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.

3. D.90-06-025 states that rate changes (including rules, regulations, and other provisions necessary to offer service to end users) that would reduce margins shall be filed as advice letters for approval by Commission resolution. To gain Commission approval, the carrier must make a showing that the reduction in retail margin will still make the retail operation function on a break-even or better basis. Because of the difficulties of CACD in verifying compliance with Ordering Paragraph 15, the reductions in retail rate elements should have an equal reduction to the same wholesale rate element until the USOA system is in place.

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 using temporary tariff authority or regular advice letter.

5. CACD should have the authority to reject temporary tariff filing which does not comply with the margin requirements.

6. No rate increases in any form should be allowed under temporary tariff status or regular advice letter until the USOA is in place.

THEREFORE, IT IS ORDERED that:

1. Advice Letter No. 49, filed under temporary tariff authority is suspended effective September 25, 1991.

2. The protest of San Diego Cellular Communications, Inc. is granted.

3. The protest of Cellular Resellers Association, Inc. is granted.

4. CACD is granted authority to reject filings that affect the current margin, element by element, until the Cellular Phase III Decision or USOA is issued.

5. 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
Executive Director

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

I abstain

G. MITCHELL WILK
Commissioner