PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-14619
October 11, 1991

R E S O L U T I O N

RESOLUTION T-14619. FRESNO CELLULAR TELEPHONE COMPANY. ORDER REGARDING FRESNO CELLULAR TELEPHONE COMPANY'S REQUEST TO RESTRUCTURE ITS RETAIL RATES AND MODIFY ITS WHOLESALE RATES.

BY ADVICE LETTER NO. 33, FILED ON APRIL 30, 1991.

SUMMARY

Fresno Cellular Telephone Company (FCTC), by Advice Letter No. 33, filed April 30, 1991 requests authority to restructure its retail rates and modify its wholesale rates. The advice letter seeks to implement the following:

1. Replace the company's basic retail plan with a new basic retail rate plan with increases in access and usage rates.

2. Introduce a Standard Plan, a Premium Plan and an Emergency Service Plan.

3. Replace the wholesale plan with a new basic wholesale rate plan with increases in access and usage rates.

The Cellular Resellers Association, Inc. (CRA) filed a protest to Advice Letter No. 33 on May 20, 1991. The protest claimed that FCTC's new rate plans would substantially reduce the retail margins which is in violation of Ordering Paragraph 15 of Commission Decision (D.) 90-06-025. FCTC filed its response to CRA's protest on May 30, 1991. On June 17, 1991, Mr. G. Mark Nickel of Visalia, California wrote the Commission stating, among other things, that the increase that FCTC seeks in its Advice Letter No. 33 appears to be a tool to subsidize the new Emergency Service Plan. This Resolution grants CRA's protest in part and rejects the filing.

BACKGROUND

FCTC, by Advice Letter No. 33, filed April 30, 1991, seeks to restructure its basic rate plan and add three optional plans as follows:

Existing Basic Rates	Retail	Wholesale	Difference	Margin
Access Charge:				
1-5 numbers-each number	31.00	24.00	7.00	29%
6 + numbers-each number	28.00	24.00	4.00	16%
Usage Charge:				
Peak				
Up to 50,000 minutes/mo.	.35	.287	.063	21%
50,001-300,000	.35	.280	.070	25%
300,001-600,000	.35	.275	.075	27%
over 600,000	.35	.245	.105	42%
Off-Peak				
50,000 minutes/mo.	.20	.165	.035	21%
over 50,000	.20	.160	.040	25%

Proposed Basic Rates	Retail	Wholesale	Difference	Margin
Access Charge:				
1-5 numbers-each number	35.95*	26.95*	9.00	33%
6 + numbers-each number	32.95*	26.95*	6.00	22%
Usage Charge:				
Peak and Off-Peak				
50,000 minutes/mo.	.35*	.287*	.063	21%
50,001-300,000	.35*	.280*	.070	25%
300,001-600,000	.35*	.275*	.075	27%
over 600,000	.35*	.245*	.105	42%

* Indicates price increase

Standard Plan	
Access Charge	$86.00
Usage over 150 mins.	.33
Premium Plan	
Access Charge	$146.00
Usage over 350 mins.	.32
Emergency Service Plan	
Access Charge	$20.00
Usage 5 to 125 minutes	1.00
Usage over 125 minutes	.35

NOTICE/PROTESTS

Public notice that FCTC filed Advice Letter No. 33 to introduce the new retail and wholesale rates appeared in the California

Public Utilities Commission's May 2, 1991 Daily Calendar. In addition, copies of FCTC's Advice Letter No. 33 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 May 20, 1991, CRA protested FCTC's Advice Letter No. 33 with the following arguments:

- The three new FCTC retail rate plans (standard, premium, and emergency), together with the new wholesale rate would reduce the retail margin of any independent reseller competing with FCTC in the Fresno MSA. This offering violates D.90-06-025.
- The openly discriminatory nature of the filing places it in violation of Sections 453 and 532 of the Public Utilities code. By failing to include a wholesale version of the new standard, premium, and emergency retail plans, FCTC blatantly discriminates against resellers.
- FCTC's tiering method will have only a minor beneficial effect to the resellers.

FCTC responded to CRA's protest on May 30, 1991. The response is summarized below:

- D.90-06-025 does not require the carrier to implement wholesale rates which "clone" each new retail rate structure that the carrier wishes to make available to its subscribers. The public should not be deprived of new retail rate plans.
- Facilities-based carriers should be responsible for innovative pricing schemes for retail rates. Cellular carriers should be given flexibility to price to attract casual users. D.90-06-025 states that the margin between current basic retail and wholesale rates will be maintained until the cellular USOA is revised unless the facilities-based carrier can show that margin modifications will not render its own retail operation unprofitable. D.90-06-025 does not suggest that a showing is necessary when a carrier introduces new optional retail rate plans.
- The new basic retail rate plan is accompanied by a new basic wholesale rate plan which will provide a wholesale-retail margin that is larger than the margin available under the company's existing tariffs.
- The basic retail service establishment charge and the basic wholesale service establishment charge remain unchanged.
- The monthly access margin increased 28.75%.

- The basic peak usage rates are unchanged for retail and wholesale. The margin is also unchanged.
- The margin calculations are exclusive of the additional discounts available to large volume resellers.
- The margin in each of the optional rate plans either exceeds the current margin or otherwise complies with D.90-06-025. The Commission did not refer to the "margin" as some kind of "percentage" margin. The margin between the new Standard Plan and the basic wholesale rate plan is greater than the margin between FCTC's existing basic retail and wholesale rates by 18 cents per customer.

On June 17, 1991, a customer of FCTC in the Central San Joaquin Valley wrote the Commission stating, among other issues, that the increase that FCTC seeks in its Advice Letter No. 33 appears to be a tool to subsidize the new Emergency Service Plan. The concerned customer urges the Commission to be very discerning regarding the rate increase.

DISCUSSION

There are two major issues relating to FCTC's Advice Letter No. 33. They are the rate increases to the basic rate plan and the alleged margin reductions in the optional plans.

The percent increases in FCTC's wholesale and retail basic plans are shown below:

Basic Retail Plan

Access charge		
1-5 number-each number	-	16.0%
6 + numbers-each number	-	17.7%
Usage Charge		
Peak	-	no change
Off-Peak	-	75.0%

Basic Wholesale Plan

Access Charge		
1-5 numbers-each number	-	12.3%
6 + numbers-each number	-	12.3%
Usage Charge		
Peak	-	no change
Off-Peak		
Up to 50,000 minutes/mo.	-	74.0%
50,001 - 300,000	-	75.0%
300,001 - 600,000	-	71.9%
over 600,000	-	53.1%

From a customer's perspective, the proposed basic retail access charge for the 1-5 numbers and 6+ numbers represents an increase of 16% and 18% respectively. The off-peak usage charge will increase 75%. If an existing customer retains service under the basic retail plan, the monthly charge for 200 minutes of usage will increase from $95.00 to $105.95 per month.

Advice letters containing rate element increases must 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 proposed rates.
>
> d. Explanation of any major change (50 basis points) in the projected return on investment over the prior 3-year recorded average.
>
> e. Cost-support data as requested by Commission staff.

We agree with CACD's position that the advice letter clearly involves rate increases and falls under the requirements of O.P. 9 in D.90-06-025 as quoted above. While a review of O.P. 9 requirements for rate increases may appear inconsistent with the intent of D.90-06-025 and our prior cellular decisions, they are not inconsistent. Our expectations for this industry were price decreases - thus the burden of justifying an increase.

The Commission never intended cellular companies to have cost-based rates or rate based regulation. Cellular rates were to be determined by a competitive marketplace. We recognize that O.P. 9 requirements give the appearance of returning to a rate based type of regulation. What we intended was that cellular rates be just and reasonable. Data supplied by FCTC under O.P. 9 does not adequately justify the rate increases.

We are concerned with the magnitude of the rate element increases in FCTC's advice letter which are as high as 75 percent. The requested increases are too great to be handled in the advice letter process. We are therefore rejecting without prejudice FCTC's advice letter. If FCTC wishes to have these increases considered, it should file an application with full support. An application would allow the Commission to review and possibly clarify any misunderstandings parties have on O.P. 9 and allow us to look more closely at the proposed increases.

FCTC observes that it has not modified its rates since the commencement of service in 1987. Since that time it has made significant capital investments in its system and additional investments will continue in the future as additional capacity and digital equipment will be added to meet expected subscriber demands. It maintains that the structure of optional rate plans is designed to foster rate innovation that will serve the public interest. FCTC is aware that the rate increase may result in reduced usage by affected subscribers or even termination of service, but the new optional rate plans will provide cost savings to a significant number of their subscribers. FCTC believes that each subscriber will elect the rate plan economical to them. We note that by Advice Letter No. 33, FCTC's basic retail plan is more expensive than the new Standard Plan, assuming a 200 minutes usage.

A review of the new basic retail rate plan and the new basic wholesale rate plan indicates that the margins for usage rates (peak and off-peak) have not decreased. In fact, the rate margins for peak, off-peak and access all increased as can be seen from the tables in the background section.

Based on a 200 minutes per month usage, we have computed that the reseller's margin under FCTC's existing Basic Retail Plan is 26%. On the other hand, the proposed Basic Retail Plan, using the same 200 minutes per month usage shows a margin of 27%.

To get a quantitative indication of the margin effect of FCTC's other new retail plans, we have made the following sample computations:

1. Standard Plan	Retail	Wholesale	Margin
Access Charge	$ 86.00	$ 26.95	
Usage over 150 minutes			
200 - 150 = 50 x $0.33	16.50	56.00	
Total Monthly	$102.50	$ 82.95	23.56%

Assumption: 200 minutes per month with 80% peak and 20% off-peak usage.

2. Premium Plan	Retail	Wholesale	Margin
Access Charge	$146.00	$ 26.95	
Usage over 350 minutes			
400 - 350 = 50 x .32	16.00	112.00	
Total Monthly	$162.00	$138.95	16.59%

Assumption: 400 minutes per month with 80% peak and 20% off-peak usage.

3. Emergency Service Plan

Access Charge	$ 20.00	$ 26.95	
Usage over 5 minutes 20 - 5 = 15 x 1.00	15.00	5.60	
Total Monthly	$ 35.00	$ 32.55	7.53%

Assumption: 20 minutes per month usage.

Under FCTC's proposal, the reseller's margin will vary from 27% to 7.5% because there is no corresponding wholesale rates offered in the Standard Plan, the Premium Plan, and the Emergency Service Plan.

We applaud FCTC's stated intention of bringing the most economical plan to individual users. The "cafeteria style" approach of providing multiple plans to meet the needs of individual users is part of this Commission's basic philosophical direction for the cellular industry. However, we find validity in CRA's presentation that a change in margin will occur as a result of FCTC's Advice Letter No. 33. We understand FCTC's claim that modification of the basic retail and wholesale rates and the introduction of other retail plans without any corresponding wholesale plan should provide opportunities to the resellers to design their own innovative retail rate plans; but absent implementation of the cellular USOA, we believe that FCTC's proposal merits further Commission investigation before being allowed to go into effect.

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. FCTC has submitted workpapers under different scenarios indicating the proposed rate changes would maintain its profitability in retail operations.

Until recently the Commission has not been faced with controversial reduction in margin protests. 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 process, which makes it extremely difficult for the Commission and its staff to evaluate the validity of protests alleging reductions in margin without going to hearings.

FINDINGS

1. FCTC's Advice Letter No. 33 results in reduction in the retail margin as a result of the introduction of the Standard Plan, the Premium Plan and the Emergency Service Plan. The act of increasing the basic retail plan and offering simultaneously three new retail plans which are more economical affects the current margins. It involves issues that are too complex for the advice letter process and which can be handled more appropriately in an application.

2. O.P. 9 of D.90-06-025 may require Commission clarification which can better be handled in an application or in a petition for modification.

THEREFORE, IT IS ORDERED that:

1. Fresno Cellular Telephone Company's Advice Letter No. 33 is rejected without prejudice.

2. The protest of Cellular Resellers Association, Inc. is granted in part.

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 October 11, 1991. The following Commissioners approved it:

Neal J. Shulman

NEAL J. SHULMAN
Executive Director

JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert, being necessarily absent, did not participate.