C. **Cellular Dealers**

The primary business of cellular dealers is selling cellular services and products, and they are commonly viewed as cellular specialists. Dealers hire their own sales personnel, advertise widely, and at times work through sub-dealers having no contractual relationship with a certificated entity. They are independent agents who have negotiated agreements to market cellular services with facilities-based carriers or resellers.

Dealers allude to a disparity in the levels of commissions being paid by facilities-based carriers to dealers versus retailers. However, retailers have no apparent advantage in negotiating commission payments. Both dealers and retailers exercise their independent business judgment in negotiating commission agreements with the facilities-based carriers and with resellers.

The negotiated agreements between dealers and facilities-based carriers or resellers typically provide dealers training about cellular service and products, demonstration telephones, reimbursement for a portion of advertising expenses incurred by the dealer, and other support, along with commissions of approximately $50 to $400 per number activation. The actual amounts of commissions negotiated between dealers and cellular carriers depend on factors which include total number of sales, the rate plan selected by the consumer, name recognition and number of outlets. In most instances, dealers return a portion of their commissions if the consumers do not remain on service for a specified period of time, typically six months.

Equipment may be purchased from any equipment supplier, including directly from the manufacturers. There are no exclusive arrangements between dealers and carriers with regard to the sale of equipment. Cellular carriers do not dictate the price at which any equipment is sold.

Presently, there are approximately 50 to 75 dealers operating in the Los Angeles market. However, the dealers predict that they will be unable to continue to profitably compete if bundling is permitted because of below-cost equipment sales and because carriers pay higher commissions to retailers than to dealers. Dealers further predict that bundling will have the effect of leaving the equipment market solely to cellular carriers and retailers, with the potential for cellular carriers to exercise further control over the retail equipment market by reducing or eliminating commission payments to the retailers.

The dealers have a valid concern. However, it is unclear whether they are concerned only with the potential for anticompetitive practices or whether they seek to perpetuate the protection from competition offered by the current prohibition against bundling. As addressed in the discussion of bundling in other states, there is no basis to assume that below-cost pricing of equipment of the sort prohibited by B&P Code § 17043 will occur. In addition, a CRA witness substantiated that, as a dealer in a state where bundling was prevalent, he was able to achieve growth and profitability even without engaging in bundling.

Further, there is no correlation between the existence or absence of bundling and the number of dealers or their activation levels in a given region. For example, in 1993, dealers activated approximately 62% of the total customers' numbers of McCaw's California cellular systems as compared to its national average dealer activation rate of 61%, which includes data from states which permit bundling. In 1992 McCaw's actual experience, show that dealers activated 60% in California and 60.1% nationally of total customer numbers.

In summary, cellular dealers operate in a reasonably competitive market that will continue to exist even if bundling is authorized.

D. **Cellular Resellers**

Cellular resellers are certificated non-dominant carriers who purchase wholesale cellular service from facilities-based carriers at a gross wholesale margin of approximately 25%. After accounting for the resellers' direct costs of doing business, the balance represents the resellers' profit. Resellers' direct costs include consumer acquisition cost, billing, and collecting tariffed retail charges from consumers. Unlike dealers, resellers do not receive commissions from the facilities-based carriers for consumer activations. Resellers acquire cellular equipment from manufacturers and cellular telephone distributors.

CRA contends that the resellers' presence in the cellular service market constrains the conduct of other participants in the cellular market, which makes market participants provide better service while being more careful about their pricing. CRA further contends that it is already difficult for resellers to maintain a presence on a viable operation basis and that under the present unbundled environment, 22 of the 36 certificated resellers who filed 1992 unaudited financial statements with the Commission operated at a loss, while the other 14 resellers reported positive operating margins averaging 4.7%.

Resellers expect that bundling would further hinder their economic ability to continue operating in California. However, they believe that they could continue to operate if the duopoly carriers make available, on a nondiscriminatory basis, cellular equipment and tariff commissions to all entities, including resellers, who activate cellular consumers. We discuss the resellers' equipment and commission proposal in a subsequent section of this order.

Although the resellers see bundling as threat to their continued operations, viability does not appear to be a problem for resellers in states which permit bundling. For example, a comparison of reseller activations on McCaw's systems in

California, where there are six resellers, and New York, where there are three resellers, shows that the resellers had 1.9% of McCaw's market share in California and 5.9% of McCaw's New York market share. Bundling has been permitted in New York since the 1984 initiation of cellular service in that state. The resellers' share of McCaw's New York market in 1993 was lower than their 10% share in 1992. However, it was substantially higher than their California share. On a national basis, McCaw's resellers' activation average of 2.5% for 1993 was higher than its resellers' activation average of 1.9% in California. The record also contains the example of Connecticut Telephone, one of as many as fifteen cellular resellers in the Connecticut market. Connecticut Telephone has been in business for ten years, has six resale outlets, has a growing subscriber base, and has operated profitably even without consistently bundling discounts on cellular equipment with service.

Although resellers' subscriber base has grown over the years, and has thus qualified the resellers for higher volume discounts from the duopoly carriers, resellers such as Connecticut Telephone have not lowered their rates over time, except to match the duopoly carriers' rates. The structure of the volume discounts resellers receive from the cellular carriers creates an incentive for resellers to seek high-volume business and to pay less attention to individual consumers than to the cream-of-the-crop, high-volume users.

As we have discussed, California resellers operate on a set gross wholesale margin. The resellers' profitability is determined after the individual resellers deduct direct and overhead costs such as salaries, advertising, customer service, billing, and uncollectible bills. To the extent resellers keep their direct and overhead costs below the gross profit margin, they will be profitable. In other words, the greater the resellers' efficiency, the greater the resellers' profit.

In addition, the longer the consumer remains a customer of the reseller, the higher the profit the reseller will earn. This is because the reseller's fixed costs to attract and maintain that individual consumer will be less on a monthly basis over time.

The type of bundling Bakersfield proposes may provide indirect price competition between resellers and cellular providers for cellular service, but the direct effect on resellers will be slight. Resellers appear to thrive by concentrating on high-volume customers. But those are precisely the customers that are most likely to focus on the cost of cellular service (per-minute and per-month), an area where resellers have an advantage over providers, than on the initial cost of cellular equipment, which is the barrier that bundling seeks to overcome.

For these reasons, we conclude that resellers will continue to be a healthy and important segment of the cellular industry, even if we grant authorization for increased bundling.

E. Cellular Retailers

Cellular retailers consist of mass merchandisers, which, like dealers, are independent agents with negotiated agreements with facilities-based carriers or resellers. Examples of retailers include Circuit City, the Good Guys, Target, and Sears. These retailers sell cellular equipment and services in direct competition with cellular dealers and resellers, and, at times, may operate through sub-dealers having no contractual relationship with a certificated entity. Like dealers, retailers receive commissions from duopoly carriers and are subject to charge-backs for early deactivation. Unlike dealers, retailers do not as a rule provide any service for cellular equipment.

Although retailers did not testify in this proceeding, testimony from the duopoly carriers, dealers and resellers demonstrates the retailers' ability to operate competitively with low profit margins on individual products due to product diversity. Advertisements introduced by the various parties also shown that,

even though retailers do not service cellular equipment, retailers are aggressively active in states which permit bundling. We do not expect that more liberal bundling authority would have a significant adverse effect on retailers.

F. **Bundling Alternatives**

Some of the parties opposing Bakersfield's petition for permission to bundle discounts on cellular equipment with cellular service endorse bundling under specific conditions.

1. **CRA's Bundling Alternative**

Although CRA objects to Bakersfield's voluntary bundling request, it proposes that if Bakersfield's request is granted, such approval must be conditioned upon the duopoly carriers' providing cellular equipment to resellers on a nondiscriminatory basis pursuant to Commission policy established in D.93-01-014, and upon the duopoly carriers' paying resellers, in a tariffed nondiscriminatory manner, the same activation commissions that the duopoly carriers pay their own agents.

The Commission policy to which CRA refers to is a Commission order which adopts a Stipulated Agreement between LA Cellular and CRA to establish a program for converting LA Cellular's existing customers from equipment that operates in an analog-only mode to dual-use equipment capable of sending and receiving both digital and analog signals.

CRA, in this case, promotes the idea of extending as a binding policy the Commission's adoption of a stipulated agreement between CRA and one duopoly carrier to the entire cellular industry. Rule 51.8 of the Commission's Rules of Practice and Procedure provides that Commission adoption of a stipulation or settlement does not constitute approval of, or precedent regarding any principle or issue in the proceeding or in any future proceeding.

Although the order CRA cites provided for Airtouch and its affiliates to submit an application for consideration of

proposals intended to enhance system end-use equipment performance for its analog system, the Commission did not expressly adopt the order as precedent regarding any principle or issue in that proceeding or in any future proceeding. This stipulated agreement was adopted because it was a reasonable compromise between the parties involved and was not adverse to the public interest.

D.93-01-014 did not set any Commission policy. We neither endorse CRA's proposal to accept a stipulated agreement as Commission policy nor desire to let a stipulated agreement dictate regulatory policy. To the extent that bundling may be provided by cellular carriers and their agents, CRA and other parties are free to negotiate agreements consistent or inconsistent with the agreement approved in D.93-01-014 as long as such agreements are in the public interest and consistent with this order. CRA's proposal to require the facilities-based carriers to provide resellers with cellular equipment on a nondiscriminatory basis is unnecessary at this time. Facilities-based carriers such as Bakersfield already make equipment available to all of their agents on a nondiscriminatory basis.

CRA also wants any bundling approval to be conditioned upon duopoly carriers filing tariffs that provide resellers the same activation commissions that the duopoly carriers pay their own agents on a tariffed basis. This commission would be in addition to the 25% service margin that resellers currently receive from the duopoly carriers.

CRA, through its witness, asserts that the Commission's current policy of not requiring duopoly carriers to pay commissions to resellers has already put resellers at a competitive disadvantage. Absent a change in such policy, CRA's witness believes that the resellers' ability to compete in a bundled equipment and service world virtually would be eliminated.

The payment of commissions has been a major issue in numerous proceedings before this Commission. In D.89-07-019, we

concluded that commissions paid by cellular utilities to their agents are lawful. Such commissions were considered reasonable payments by cellular utilities to nonutilities for the non-utilities' sales and marketing efforts, thereby enabling the utilities to reduce their own cost of doing business by supplanting salaries the utilities would otherwise pay to their own employees.

Further, in D.90-06-025, we again considered and addressed the commission issue. As addressed in that order, there is sufficient incentive even without commissions for resellers to enter the cellular market and to operate a viable business. (36 CPUC2d at 504.) Ordering Paragraph 17 specifically directs that commission rates paid by cellular carriers to their agents shall not be restricted. (Id. at 517.) The virtue of not placing restrictions on carriers' commissions is shown in this proceeding through Bakersfield and CATA testimony which establishes that commissions are based on a variety of services provided by agents, such as volume activations and advertising.

CRA's proposal would require us to modify Ordering Paragraph 17 of D.90-06-025, a matter which was not included in Bakersfield's petition and which parties would not reasonably expect to be addressed in response to Bakersfield's petition. There is insufficient evidence in this proceeding to provide a basis for revisiting and addressing the policy on payment of commissions. However, to the extent that we permit cellular carriers to offer cellular equipment with cellular service, there is nothing to prevent resellers or agents from negotiating commissions with cellular carriers for services that they may provide in connection with bundled services.

2. **DRA's Bundling Alternative**

DRA proposes that cellular carriers offer bundled cellular service with the sale or rental of equipment at the retail level only if an equivalent wholesale plan with an adequate reseller's margin is also made available to cellular resellers.

Any price reduction in such a bundled plan would be applied to the cellular service cost.

DRA's alternative presents several obstacles. The major obstacle is that the Commission has no authority to regulate the sale or rental of CPE, a fact acknowledged by DRA's witness. Regulation of CPE has been expressly preempted by the FCC. In the "Second Computer Inquiry" (CC Docket No. 81-893, 98 F.C.C.2d 814 (1984)), the FCC concluded that CPE was a separate product from service and that its regulation was neither required nor warranted. Subsequent to the FCC's conclusion, on September 6, 1984, we issued Resolution T-10865 which acquiesced in the FCC's conclusion by stating that CPE cannot be the subject of Commission regulation in light of the FCC's Second Computer Inquiry.

Absent a change in FCC preemption policy, DRA's proposal to tariff equipment with cellular service conflicts with federal law and cannot be adopted. The FCC preemption of regulation of cellular equipment further precludes us from requiring cellular carriers to tariff any plan involving bundling cellular equipment with cellular service.

3. **UCAN's Bundling Alternative**

UCAN contends that bundling should not be approved unless it can be shown that Bakersfield's bundling objectives cannot be met under current Commission regulations, a last-resort criterion. Absent such documentation, UCAN proposes that the facilities-based carriers provide up-front equipment discounts to cellular end users through leases, installment sales, and sales of refurbished cellular telephones.

The up-front equipment discounts proposed by UCAN are not a new idea. As acknowledged by UCAN, several cellular carriers, including Bay Area Cellular Telephone Company (BACT), Bakersfield, LA Cellular, and U.S. West have either attempted to provide or are currently providing variations of UCAN's proposal.

However, as testified by Bakersfield, these up-front equipment offers have drawbacks which make them unattractive to end-users. For example, end-users have resisted installment payment arrangements for buying cellular telephones. Another drawback is that the current bundling prohibition requires that lease and rental programs be made available to cellular service customers and noncustomers alike. Such programs are generally cost-effective only where equipment is leased or rented to service customers. For those who are not service customers, credit must be established, new accounts set up, separate bills generated, and new service inquiries and collection procedures implemented.

Irrespective of the drawbacks raised by Bakersfield on UCAN's alternative, there is nothing in the Commission's rules which prevents cellular carriers from voluntarily offering leases, installment sales, or refurbished cellular telephones so long as such offerings do not violate PU Code § 532. With this restriction, cellular carriers may offer cellular telephone leases, installment sales, or refurbished cellular telephones at their discretion. However, the additional proposal offered by UCAN does not resolve the issue before us: whether cellular carriers and agents can bundle cellular equipment with cellular service on a voluntary basis.

G. **Conclusion**

As CATA and CRA testified, there is a potential that duopoly facilities-based carriers may try to control the distribution of equipment, to restrict who gets the equipment and at what price. CATA is also concerned that retailers may advertise cellular equipment at a below-cost price tied to service activation to entice consumers to enter their store upon which the retailers may sell cellular equipment without essential components such as a battery or chargers, or utilize the "bait and switch" technique.

However, it is because of such potential abuses in this and other markets that consumer protection and antitrust laws have

been established at the federal and state levels. Participants in the cellular market must operate within the provisions of those laws.

To allow bundling, as proposed by Bakersfield, could benefit California consumers so long as cellular equipment and services also continue to be offered in a separate, nondiscriminatory manner. In addition, consumers would be given the benefit of selecting bundled packages offered by duopoly facilities-based carriers, unregulated wireless carriers, dealers, resellers, and retailers, which currently exists in other states. One detriment of bundling is that consumers are not readily able to compare the cost of individually desired equipment and service needs. Consumer benefits from bundling include lower equipment costs, no adverse impact on cellular service rates, and increased consumer choices.

With bundling, a competitive cellular market among duopoly carriers, agents, dealers, resellers, and retailers (soon to be supplemented with additional unregulated wireless carriers) should continue to exist, with the added benefit of increasing economies of scale. Consumers can expect to benefit from competition not only between the different market segments but within each individual market segment. Competition between and within such varied market segments will promote consumer satisfaction through operational efficiency and the offering of consumer choices, as is taking place in states which permit cellular equipment to be bundled with cellular service.

Each market segment offers consumers a unique product or service, which will enhance consumers' choices. For example, resellers have the ability to switch consumers' primary service from one duopoly facilities-based carrier to the other; dealers are able to provide localized, low-cost repairs; and retailers are able to provide product diversity.

The adoption of Bakersfield's proposal could enhance competition within the cellular arena and go a long way in assisting us to attain our goal of good cellular service, reasonable rates, and consumer convenience. The benefits of bundling outweigh the asserted disadvantages. Accordingly, Bakersfield's bundling proposal should be adopted, subject to the following conditions: First, only cellular equipment may be discounted; cellular service must be offered only at the tariffed rate. Second, any discounts on cellular equipment must conform to federal and Califoria laws promoting consumer protection and restricting below-cost pricing. Third, regulated facilities-based carriers may not require resellers, dealers, agents, or retailers to offer discounted cellular equipment as a condition of the provision of cellular service. Fourth, facilities-based carriers, resellers, agents, dealers, and other persons under control of a facilities-based carrier or reseller must also provide unbundled cellular service.

Section 311 Comments

The ALJ's proposed decision on this matter was filed with the Docket Office and mailed to all parties of record on February 17, 1995, pursuant to Section 311 of the PU Code. Comments to the ALJ's proposed order were received from parties of record which included BACT, Bakersfield, CATA, CCAC, CRA, DRA, GTE Mobilnet of California Limited Partnership, McCaw, Nextel, UCAN, and U.S. West were timely filed with the Docket Office on March 9, 1995 and received by the ALJ. Reply comments from parties of record which included Airtouch, BACT, Bakersfield, CRA, DRA, GTE Mobilnet of California Limited Partnership, and McCaw were timely filed with the Docket Office on March 14, 1995 and received by the ALJ.

ABS Telephone Company (ABS) and All Pacific Cellular, Inc. (All Pacific) filed joint comments and reply comments with CRA, a party of record in this proceeding. However, ABS and All

Pacific are not appearances of record in this proceeding and have not filed any motions to intervene. Absent the receipt and approval of motions to intervene by ABS and All Pacific, their comments and reply comments cannot be considered as Section 311 comments. Only those comments and reply comments of CRA which complied with Rules 77.3 and 77.4 of the Commission's Rules were considered.

The Sacramento Dealers Association (SDA) also timely filed comments with the Docket Office on the ALJ's proposed decision. However, similar to ABS and All Pacific, SDA is not a party to the proceeding and has not file a motion to intervene. Absent the receipt and approval of a motion to intervene by SDA, SDA's comments cannot be considered as Section 311 comments.

Our rejection of ABS, All Pacific and SDA's tendered comments has not precluded them from providing comments to the Commission without being a party to the proceeding. Pursuant to Government Code § 11125.7, these interested entities and other interested persons or entities have the opportunity to provide public comment on the proposed order at the Commission meeting which has this matter on the agenda for Commission consideration.

Airtouch, a party to this proceeding, filed a March 13, 1995 motion to accept its late-filed comments on the proposed decision. Although Airtouch timely tendered its comments with the Docket Office and timely provided a copy its comments to all parties of record, its comments were rejected by the Docket Office on a procedural ground. Because Airtouch timely tendered its comments with the Docket Office, served a copy of its comments on all appearances of record, and at least one party replied to Airtouch's comments it is apparent that no party would be prejudiced with the grant of Airtouch's motion. Therefore, pursuant to Rule 77.5 of the Commission's Rules, Airtouch's motion to receive its late-filed comments shall be granted.

On March 9, 1995, the California Retailers Association and the Good Guys filed separate motions to intervene in this proceeding to provide comments on the proposed decision. Both the California Retailers Association and the Good Guys assert that the grant of their respective petition may be helpful to the Commission in developing a full record on the matter before us.

We grant California Retailers Association's motion to intervene in this proceeding for the limited purpose of commenting on the ALJ's proposed decision. Therefore, California Retailers Association's comments are considered to the extent that they conform with the Commission's Rules. However, we deny the Good Guys motion to intervene in this proceeding because its proposed comments offers new information, untested by cross-examination not permitted by Rule 77.3 of the Commission's Rules.

We have carefully reviewed the comments and reply comments filed by the parties to this proceeding that focus on factual, legal, or technical errors in the proposed decision and in citing such errors make specific references to the record, pursuant to Rule 77.3. To the extent that these comments and reply comments which complied with the Commission's Rules required discussion or changes to the proposed decision, the discussion or changes have been incorporated into the body of this order. Comments and reply comments which merely reargue positions taken in briefs, and which provide new factual information, untested by cross-examination, were not considered pursuant to Rule 77.3.

Findings of Fact

1. Bakersfield seeks authority for cellular agents to voluntarily condition equipment discounts on the cellular end-user's agreement to activate service with a designated cellular service provider and for cellular utilities to bundle their own cellular service with discounted equipment.

2. Parties agreed that five issues would be addressed in an evidentiary hearing: impact on wireless providers; bundling in

other states; tariff disclosure; impact on CPE providers; and impact on consumers. By ALJ ruling, the issue of leasing or renting of equipment as an alternative to bundling was added.

3. Bakersfield proposes that cellular service would in all circumstances be available at the same tariffed rates to all end-users irrespective of where they purchased their telephones. Equipment pricing would continue to be at the sole discretion of the equipment vendors.

4. The Commission may, consistent with PU Code § 532, authorize bundling to the extent that tariffed rates are not, directly or indirectly, compromised.

5. B&P § 16727 makes it unlawful to tie goods and services if the effect is to substantially lessen competition or tend to create a monopoly in any line of trade or commerce.

6. B&P § 16727 provides the basic criteria for considering at what point tying arrangements are illegal.

7. The cellular equipment manufacturing market consists of large entities not regulated by this Commission, and appears to be reasonably competitive.

8. D.94-08-022 found that cellular services market is not competitive.

9. B&P § 17026.1(e) states that B&P § 17026.1 shall not be interpreted to reduce, alter, or otherwise modify Commission authority to regulate or prohibit the payment of commissions or rebates to distributors or vendors of cellular telephones, and its provisions shall be effective only to the extent they do not conflict with any applicable regulatory rules, or orders promulgated or issued by the Commission.

10. The relaxation of the bundling restrictions can benefit the public through enhanced competition between the regulated and unregulated wireless providers.

11. California is the only state which does not currently permit discounts on cellular equipment to be bundled with cellular service.

12. Currently, California consumers can purchase cellular equipment on an unbundled basis at lower prices than consumers can purchase stand-alone cellular equipment in states permitting bundled cellular services.

13. The cost of cellular equipment is the most important factor considered by potential users who are contemplating whether to subscribe to cellular service.

14. Consumers rarely buy a cellular telephone as a stand-alone purchase.

15. Cellular telephone equipment prices would fall in California with the introduction of bundled equipment and services.

16. Lower telephone equipment costs in states that permit bundling do not result in higher cellular service rates.

17. Comparisons of the costs of cellular telephones must take into consideration rebates, promotional allowances, close-outs, damage discounts, and volume allowances.

18. California has laws which restrict the practice of below-cost pricing.

19. Cellular carriers do not dictate the price at which any equipment is sold by resellers, agents, or dealers.

20. Dealers operating in states where bundling is allowed perform as well as, or better than, dealers in California.

21. In states which permit bundling, resellers such as Connecticut Telephone have operated profitably even without consistently bundling cellular equipment with cellular services.

22. California resellers operate on a set gross wholesale margin.

23. To the extent resellers keep their direct and overhead costs below the gross profit margin, they will be profitable.

24. Retailers are able to operate competitively with low profit margins on individual products due to product diversity.

25. The retailer market is aggressively active in states which permit bundling.

26. D.93-01-014 did not set general Commission policy.

27. The commission issue was addressed in Ordering Paragraph 17 of D.90-06-025.

28. Duopoly carriers and resellers are free to negotiate commissions for activating consumers.

29. Several cellular carriers have either attempted to provide or are currently providing variations of UCAN's equipment lease and rental proposal.

30. Commission rules do not preclude cellular carriers from voluntarily offering leases, installment sales, or refurbished cellular telephones so long as such offerings do not violate PU Code § 532.

31. Consumers have benefited from bundling in other states.

Conclusions of Law

1. Bakersfield's petition should be granted to the extent provided in the following order.

2. PU Code § 532 prohibits cellular utilities from charging rates which differ from those in applicable tariffs. However, the statute also authorizes the Commission, by rule or order, to establish exceptions from the operation of this prohibition as may be considered just and reasonable as to each public utility.

3. PU Code § 532 does not prohibit or make illegal the bundling of cellular equipment with cellular service in all circumstances.

4. PU Code § 702 requires cellular utilities to secure compliance of their agents with Commission rules and orders.

5. As discussed in D.89-07-019, bundling would be lawful for agents if the same practice undertaken by the utility is lawful.

6. B&P § 16727 does not prohibit the bundling or tying of cellular equipment to cellular services in case where the effect of the bundling or typing is not to substantially lessen competition or tend to create a monopoly.

7. B&P § 17026.1(c) states that the Legislature supports Commission policy that makes illegal the act, or practice, of bundling as defined and described in relevant Commission decisions and orders.

8. Rule 51.8 of the Commission's Rules of Practice and Procedure provides that the adoption of a stipulated agreement is binding on all parties to the proceeding in which the stipulation is proposed. However, such adoption does not constitute approval of or precedent regarding any principle or issue in any future proceeding.

9. The regulation of cellular equipment has been expressly preempted by the FCC.

10. Because of the public interest in competitive cellular service, this order should be effective immediately.

11. Providers of bundled cellular service and cellular equipment should conform to all applicable California and federal consumer protection and below-cost pricing laws.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraph 16c. of Decision (D.) 90-06-025 as modified by D.90-10-047 shall be further modified to read as follows:

> 16c. Notwithstanding the provisions of Ordering Paragraph 16(b), a provider of cellular telephone service may provide or permit any agent or dealer or other person or entity subject to its control to provide to any customer or potential customer equipment price concessions offered on the condition that such

customer or potential customer subscribes to the provider's cellular telephone service. However, such activity shall be permissible only to the extent that:

1. Only cellular equipment may be discounted; cellular service must be offered only at the tariffed rate.

2. Cellular telephone equipment shall not be tariffed.

3. Regulated facilities-based carriers may not require resellers, dealers, agents, or retailers to offer discounted cellular equipment as a provision of cellular service.

4. Facilities-based carriers, resellers, agents, dealers, and other persons under control of a facilities-based carrier or reseller must also provide unbundled cellular service.

5. Providers conform to all applicable California and federal consumer protection and below-cost pricing laws.

2. The Executive Director shall mail a copy of this order to all certificated cellular wholesalers and cellular resellers.

This order is effective today.

Dated April 5, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
Commissioners

I abstain.

/s/ HENRY M. DUQUE
Commissioner

APPENDIX A

List of Appearances

Petitioner: David Simpson and David Wilson, Attorneys at Law, for Bakersfield Cellular Telephone Company.

Interested Parties: Adam A. Andersen, Attorney at Law, for Bay Area Cellular Telephone Company; Mark E. Brown, Attorney at Law, for MCI; Peter A. Casciato, Attorney at Law, for Cellular Resellers Association, Inc.; Wright & Talisman, by Michael B. Day, Attorney at Law, for Cellular Carriers Association of California; Jackson, Tufts, Cole & Black, by Joseph Faber and William Booth, Attorneys at Law, for U.S. West Cellular of California, Inc.; Joel Pressman, Attorney at Law, Richard Hansen and Brendan Ring, for Cellular Agents Trade Association; Richard C. Nelson, for AirTouch Communications; Megan W. Pierson, Attorney at Law, for AirTouch Communications and Affiliates; Cooper, White & Cooper, by Mark P. Schreiber, Attorney at Law, for California RSA #1, Inc., California #2 Cellular Corp., California RSA #3 LP., and California RSA #9, Inc.; Earl Nicholas Selby, Attorney at Law, for Nextel Communications, Inc.; Michael Shames, Attorney at Law, for Utility Consumers Action Network (UCAN); James Squeri, Attorney at Law, for GTE Mobilnet of California Limited Partnership and Mountain Cellular; Morrison & Foerster, by Suzanne Toller, Attorney at Law, for McCaw Cellular Communications.

Division of Ratepayer Advocates: Janice Grau and Truman L. Burns, Attorneys at Law.

(END OF APPENDIX A)