

Decision **DRAFT DECISION OF ALJ BUSHEY** (Mailed 9/13/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

<p>Utility Consumers' Action Network,</p> <p style="text-align: right;">Complainant,</p> <p style="text-align: center;">vs.</p> <p>Cingular Wireless,</p> <p style="text-align: right;">Defendant.</p>
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Case 05-07-022
(Filed July 22, 2005)

OPINION APPROVING SETTLEMENT

I. Summary

This decision approves a settlement between the Utility Consumers' Action Network (UCAN) and New Cingular Wireless PCS, LLC (Cingular) regarding the provision of and billing for wireless content services¹ to California customers. The Settlement Agreement provides for enhanced customer protections, and we find that it is (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest, in accordance with Commission Rule 51.1(e). Thus, we approve the settlement.

¹ The Settlement Agreement defines "wireless content services" as: "digital content (a ringtone, graphic, game, etc.) or digital application (e-mail reader, weather tracker, etc.) sold by a Third Party for an incremental fee that is charged directly to a Cingular customer's bill or withdrawn directly from a Cingular customer's prepaid account."

II. Background

UCAN alleged that defendants were violating California law and Commission regulations regarding required authorization for placing charges on telephone bills. Cingular moved to dismiss the complaint on grounds of federal preemption of telecommunication law and on other grounds. The Commission granted Cingular's motion in part, but also reiterated that all billing telephone companies must comply with California law and place only authorized charges on subscribers' bills. (See Utility Consumers' Action Network v. Cingular Wireless, Decision (D.) 06-02-012, *mimeo.* at pages 1-2.)

At the prehearing conference on March 9, 2006, the parties requested that the procedural schedule include mediation. Administrative Law Judge (ALJ) Weissman convened mediation on May 17, 2006, and reported to the assigned ALJ that the parties had reached an agreement in principle on May 19, 2006.

The parties have reduced the settlement terms to writing and filed the agreement, with a motion seeking Commission approval, on August 15, 2006. The Settlement Agreement is Appendix A to today's decision.

III. Description of the Settlement Agreement

The Settlement Agreement is designed to ensure that customers understand what they are buying when they buy it, and how to cancel services they no longer want. The Settlement Agreement requires Cingular to:

1. send a free subscription confirmation message for all wireless content service orders, as well as periodic reminder messages of the subscription, and include information on how to cancel the subscription;
2. implement a per line dollar limit cap for purchases of wireless content services;
3. create a blocking option to prevent ordering any wireless content service; and

4. institute free and ready means to address billing issues and cancel wireless content services.

The Settlement Agreement also requires UCAN to notify Cingular of any alleged breach in the agreement, and to allow Cingular an opportunity to cure the alleged breach, prior to filing a complaint with the Commission.

IV. Discussion

A. Approval of Parties' Settlement Agreement

Because the parties have agreed to resolve the proceeding by means of a settlement, the case should be analyzed pursuant to the Commission's settlement rules. In order for a settlement to be approved by the Commission, the settlement must be: (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest. (Commission Rule 51.1(e).) Each element is present here.

1. Reasonableness in Light of the Whole Record

The parties contend the Settlement Agreement is reasonable in light of the whole record because it addresses the three key concerns that UCAN raised in its complaint. UCAN contended the customers who ordered wireless content services were not adequately informed of the rates and terms of service. The Settlement Agreement provides for confirmation and reminder messages with this information. UCAN was also concerned about minors ordering wireless content services; the Settlement Agreement allows subscribers to choose a blocking option at no charge, and imposes a per line limit on wireless content charges. UCAN's final area of concern was Cingular's handling of customer complaints. The Settlement Agreement requires Cingular to provide customers a single contact point or equally effective means to address billing issues and cancel services.

We agree that the Settlement Agreement is reasonable in light of the record. Cingular has agreed to adopt numerous measures that will enhance customer protections from billing of unauthorized charges. Based on the record, these are reasonable steps to address the issues raised by UCAN.

2. Consistent With the Law

The Settlement Agreement is consistent with the law. Pursuant to Pub. Util. Code § 2890(a), Cingular may bill only charges that have been authorized by the subscriber. As set forth in the Settlement Agreement and summarized above, Cingular has agreed to make operational improvements designed to better ensure compliance with the statutory requirements.

3. In the Public Interest

Finally, we find that the Settlement Agreement is in the public interest, in that the Settlement Agreement enhances consumer protections. It also provides UCAN with a means, short of formal litigation, to seek immediate correction of any future alleged violations by Cingular.

The Settlement Agreement also provides that Cingular will file information regarding Wireless Content Services cramming complaints with the Commission. The details of the reporting requirements will be as set forth in D.06-03-013, which revises General Order 168 as part of the Commission's Consumer Protection Initiative.

For the foregoing reasons, the Commission finds that the Settlement Agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The Settlement Agreement should therefore be approved.

V. Categorization and Need for Hearings

We originally categorized this proceeding as adjudicatory and determined that hearings were necessary. The motion for approval of the Settlement Agreement was filed before the hearing, and the hearing therefore did not occur. In light of our approval of the Settlement Agreement, a hearing is not necessary.

VI. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.2(a) of the Rules of Practice and Procedure.

The draft decision approved the settlement agreement but rejected the termination provision found in paragraph 28 because the parties provided no rationale for terminating the agreement. The parties filed joint comments and Cingular filed separate comments opposing the draft decision's rejection of the termination provision. The parties explained that the termination provision was necessary to provide Cingular flexibility to address future changes in the wireless market and the manner in which wireless content services are billed for and delivered.

The parties' comments sufficiently explained the rationale for the termination provision and have resolved the issue raised in the draft decision. We have, therefore, removed the section disapproving the termination provision and will approve the settlement agreement as filed.

VII. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. All parties have agreed to the Settlement Agreement.

2. The Settlement Agreement requires Cingular to implement several measures designed to address the issues raised by UCAN in its complaint.

3. In their comments on the draft decision, the parties explained their rationale for terminating the Settlement Agreement on December 31, 2008.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

2. Hearings are not necessary.

3. The Settlement Agreement should be approved.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement appended to this decision as Appendix A is approved.

2. No hearing was necessary for this proceeding.

3. Case 05-07-022 is closed.

This order is effective today.

Dated _____, at Fresno, California.

