

Decision 88 09 062 SEP 28 1988

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SEP 29 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Pacific Bell, a corporation, for )  
 authority to increase certain intra- )  
 state rates and charges applicable )  
 to telephone services furnished )  
 within the State of California. )

Application 85-01-034  
 (Filed January 22, 1985;  
 amended June 17, 1985 and  
 May 19, 1986)

I.85-03-078  
 (Filed March 20, 1985)

And Related Matters.

OII 84  
 (Filed December 2, 1980)

Case 86-11-028  
 (Filed November 17, 1986)

INTERIM OPINION ON PACIFIC BELL'S PETITION  
 FOR MODIFICATION OF DECISION 86-05-072

Background

On May 18, 1988, Pacific Bell filed a Petition for Modification of D-86-05-072, the cease and desist order issued by this Commission on May 28, 1986, in connection with the utility's violation of Public Utilities (PU) Code § 532, General Order 153, and Tariff Rules 6 and 12. Pacific Bell's filing was prompted by a desire to modify its compensation plan for certain marketing employees (known as "Account Executives-Telecommunications" or "AETs") to mirror a performance-based compensation plan presently applicable to other Account Executives (AETs) within the company.

The Commission considered many aspects of the marketing abuse problem in its cease and desist order, including the role of Pacific Bell's telemarketing activities and sales quota programs in triggering the problem (Decision (D.) 86-05-072, mimeo. pp. 5, 10-11, 17). In response to the evidence presented to it, the Commission ordered Pacific Bell to refrain from further cold

selling telemarketing activities and to discontinue its sales quota program until further order (D.86-05-072, Ordering Paragraph 2). Recognizing that the new compensation plan for AETs may conflict with this requirement, Pacific Bell requests issuance of an order clarifying that the proposed compensation plan is not violative of the cease and desist order, or alternatively, modifying D.86-05-072 to permit the utility to implement its proposal.

Pacific Bell's Description of its Proposed Incentive Plan

Pacific Bell's AETs provide sales and service support to business customers with six or more lines. The AETs engage in "consultative selling", which is defined in the Petition as "satisfying identified customer business problems with Pacific products and services." (Pacific Bell Petition for Modification, p. 3.) AETs establish an ongoing business relationship with the customer as part of the process of determining the customer's needs and meeting them with "Pacific solutions." (Id. p. 3.) Pacific Bell indicates that the AET function is quite similar to that of the Account Executive (AE), except that the AE is responsible for fewer customers, who have more complex telecommunications needs.

Although the Petition is not precise on this point, Pacific Bell apparently contemplates expanding eligibility for the sales incentive plan to AETs, if not compensating AETs and AEs on the same basis. It indicates that AE compensation today is based on the following combination of measurements: (1) an externally measured customer satisfaction rating; (2) total billed revenue of the sales unit (i.e., the AE and the AE's team); and (3) individual net revenue of the AE's set of accounts. Pacific asserts that by putting the AET on the same compensation program, it can assure customer satisfaction and sales and service quality.

Pacific acknowledges that its Associate Sales Representatives (ASRs) have been precluded from participating in sales incentive plans since issuance of the cease and desist order. In fact a year ago, the utility eliminated the ASR job entirely and

replaced it with the AET position. While acknowledging very generally the existence of some residual functional similarities in the ASR and AET job functions (indeed a few of the customers who were handled by ASRs are now handled by AETs), Pacific asserts that AETs have more in common with AEs than with ASRs. For example, Pacific states that AEs and AETs are assigned responsibility for specific customers with whom they establish an ongoing relationship. In contrast ASRs were involved in mass marketing via telemarketing, and had limited contact with their accounts, limited presence in the community, and limited resources to support customer needs. In addition, Pacific states that both AEs and AETs provide service and sales support to their customers through fact-finding and consultative selling, although AEs deal with their customers on a face-to-face basis, and AETs meet with their customers primarily over the phone. On an individual basis, AETs handle about 400 to 600 accounts, while AEs handle fewer than 100 accounts. In contrast, ASRs handled 6000 accounts individually and 700,000 collectively (Petition for Modification, p. 6). In short, Pacific believes that AET and AE job functions are very similar and that AETs should be included in the incentive compensation plan of the marketing organization.

#### Discussion

The precise outlines of the compensation program for AETs remain somewhat sketchy. Pacific Bell's petition is largely premised on the general argument that the AETs are more functionally similar to account executives than to the former ASRs. Nonetheless, the petition acknowledges there are some similarities in the AET/ASR job functions. For example, AETs, like the former ASRs, are responsible for serving the needs of a large number of business customers who are contacted over the telephone. However Pacific Bell's basic position is that the AETs are not mere reincarnations of the ASRs, who engaged in extensive telemarketing efforts directed towards business and residential ratepayers, and

therefore it is appropriate to compensate them via an incentive plan, despite the past history of marketing abuse.

Citing an excerpt from a decision issued subsequent to the cease and desist order<sup>1</sup>, Pacific Bell implies that the Commission has determined that: "...[T]he problems were not with the incentive plans, per se, only with the way in which they created incentives to 'sell products rather than assuring the provision of proper service.' D.87-12-067 at 58." (Petition for Modification, pp. 2-3.) The Commission has never made such a determination.

In issuing the cease and desist order the Commission was concerned with the array of marketing abuses described in the evidentiary record before it, including the role of the sales quotas. For example, Exhibit 514, a sample of the so-called "sales performance range bands," was reviewed by the Commission prior to its finding that: "...[S]uch programs as the sales quotas and telemarketing activities, carried out under management's direction, substantially contributed to the marketing abuses discovered during PSD's investigation." (D.86-05-072, Finding of Fact No. 7.)

Given this history, it is our desire to proceed cautiously before allowing a reinstatement of sales quotas or comparable incentives. Indeed we adopted this cautious approach in the cease and desist order, concluding that: "Pacific Bell should be ordered to cease its cold selling telemarketing activities and discontinue its sales quota program until further order of this Commission, following review of these practices by the customer marketing oversight committee." (D.86-05-072, Conclusion of Law 9; see also, Ordering Paragraph 2).

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1 Pacific Bell's reference is to a portion of the Phase 2 decision (D.87-12-067) which detailed the DRA position, not the Commission's determination, regarding the marketing abuse penalty issue, a matter distinct from the already decided sales quota issue.

When the Customer marketing Oversight Committee (CMOC) was subsequently established, we reiterated our desire that it include the sales quota issue as part of its work (D.87-12-067, mimeo. pp. 91-93 and Ordering Paragraph 7). We recognized that CMOC, by its nature, represented an intrusion into matters that would ordinarily be left with Pacific Bell's marketing management, but stated that "...the record amply demonstrates the necessity for the slight intrusion we order." (D.87-12-067, mimeo. p. 93.)

In connection with CMOC's overall mandate to ensure that Pacific Bell's marketing practices for both business and residential customers are brought into conformance with the statutes, orders, and other appropriate tariffs on file with the Commission and that appropriate safeguards are put in place for the future, we specified several issues for CMOC's consideration. Among these issues were: "Business and residence incentive plans for salaried and non-salaried employees;" and "Business and residence quota plans (or similar plans, e.g., goals, objectives, targets, etc.) for both salaried and nonsalaried employees." (D.87-12-067, mimeo. p. 91.) Pacific Bell indicates that it raised the AET compensation issue before CMOC, and that "the CMOC did not believe its charter included reviewing this issue." (Petition for Modification, p. 5.) Given the direction contained in our prior decisions, this belief is incorrect.

This matter is referred back to CMOC with the direction that it prepare a recommendation for the Commission on the issue whether the Ordering Paragraph 2 ban on sales quotas should be waived in connection with Pacific Bell's AET proposal. If the CMOC is unable to make a recommendation on the merits of Pacific's current proposal, for whatever reason, including a lack of detailed information about the proposal, it should inform the Commission of that fact. In any event, CMOC should provide either a recommendation or a status report to us within 60 days. Naturally we expect Pacific Bell to provide sufficient information to the

CMOC so that it can discharge its responsibilities properly in this instance. We do not wish this issue to remain unresolved unnecessarily.

However we recognize the need to give CMOC some latitude about the timing of its review of Pacific Bell's AET proposal. CMOC may decide, for example, that it is appropriate to consider the issue of incentives more generally before focusing on a specific proposal, such as the AET plan. This is a matter best reserved to CMOC, which is in the best position to assess the manner in which its time and resources may be optimally allocated prior to the time its term ends (May 30, 1989, per D.87-12-067, Ordering Paragraph 7).

We will defer further action on Pacific Bell's petition for Modification pending receipt of the CMOC's recommendation.

#### Findings of Fact

1. Pacific Bell seeks authorization to modify its compensation program for Account Executives-Telecommunications (AETs) to mirror a performance based compensation plan presently in place for its Account Executives (AEs).

2. Pacific Bell makes this request in view of the Commission's cease and desist order which required discontinuance of Pacific Bell's sales quota plans until further order.

3. The Customer Marketing Oversight Committee (CMOC) is charged with a variety of responsibilities including the issue of the lifting of the ban on sales quotas, as reflected in D.87-12-067 (mimeo. pp. 91-92).

#### Conclusions of Law

1. Pacific Bell has been ordered by this Commission to cease and desist its cold selling telemarketing activities and discontinue its sales quota program until further order of this Commission, following review of these practices by the CMOC (D.86-05-072, Ordering Paragraph 2).

2. In view of the provisions of D.86-05-072, Ordering Paragraph 2, Pacific Bell should not proceed with its proposal to extend a performance based compensation plan to AETs until CMOC reviews the plan, makes its recommendation to the Commission, and the Commission thereafter approves CMOC's recommendation.

INTERIM ORDER

IT IS ORDERED that Pacific Bell's proposal to initiate a program of performance based compensation for AETs is referred to CMOC, which, under the terms of prior Commission decisions, is charged with the overall responsibility of reviewing "business and residence quota plans (or similar plans, e.g., goals, objectives, targets, etc.) for both salaried and nonsalaried employees", and making necessary recommendations to the Commission in connection with such review. When CMOC has completed its review, its chairperson shall send a letter to the assigned ALJ (with copies to all other CMOC members) outlining CMOC's recommendation for Commission action on the proposal. If this recommendation is not available within 60 days of the effective date of this order, the CMOC chairperson at that time shall provide the assigned ALJ with a written status report (with copies to all other CMOC members),

indicating when the CMOC recommendation may be available. Further action on Pacific Bell's Petition for Modification is deferred pending the receipt of CMOC's recommendation.

This order is effective today.

Dated SEP 28 1988, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Victor Weisser*

Victor Weisser, Executive Director

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