

SEP 30 1988

Decision 88-09-065 September 28, 1988

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.)

ORIGINAL
 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)

ORDER REQUESTING COMMENTS IN CONNECTION WITH PROPOSED
 MODIFICATION OF D.87-12-067

In Decision (D.) 87-12-067 (the Decision) this Commission ordered Pacific Bell to set the amount of \$16.5 million aside in a special interest bearing account, pending establishment of a legal trust designed to further the goal of ratepayer educational efforts, as more broadly defined in that decision (D.87-12-067, Ordering Paragraph 6). Thereafter in Resolution F-619 the Commission approved a proposed Trust Agreement drafted by Pacific Bell in compliance with the decision.

In this order we propose certain modifications to the Decision and/or the Trust Agreement, and solicit the comments of the parties in connection with these proposals. Such comments are due within twenty days of the effective date of this order. We place the parties on notice that we do not intend to entertain comments other than those addressing the specific modifications proposed herein.

First, we propose to modify the decision and the trust instrument to clarify that we will approve or disapprove all grants to be issued by the Ratepayer Education Trust Fund (RETF), after receiving the recommendations of the Disbursements Committee (DC). Closely related to this modification is an independent clarification concerning the Public Advisor's membership on the DC. These

modifications are detailed in the footnoted text,¹ and are more fully explained below.

1 The proposed modification is:

"D.87-12-067 is modified by:

"Modifying the first sentence of the fifth full paragraph appearing on page 87, Slip Opinion, to read: 'It is our intention to retain the disbursements committee structure set forth in the ALJ's Proposed Decision, with DRA, Pacific Bell, and two consumer groups serving as committee members. We also intend the Public Advisor to serve as a committee member, while retaining the mediation role envisioned by the ALJ.'

"Modifying the first three complete sentences appearing on page 89, Slip Opinion, to read: The Trustee shall proceed with disbursements only after receiving a formal decision made by the Commission after its review of the recommendations of the five-member disbursements committee (with each member having one vote). In no event shall such disbursements benefit any of the five disbursements committee members. If the Committee is unable to make a decision on a particular disbursement, or its members are otherwise deadlocked, the Commission's Public Advisor shall seek to mediate the dispute.'

"Modifying Ordering Paragraph 6d.(ii) to read: 'Decisions regarding disbursements shall be made by the Commission after a review of the recommendations of a committee composed of representatives of Pacific Bell, DRA, two consumer groups (chosen by the Commission, in accordance with ordering Paragraph 6c), and the Commission's Public Advisor, with each committee member having one vote. If the committee is unable to make a decision on a particular disbursement, or its members are otherwise deadlocked, the Commission's Public Advisor shall seek to mediate the dispute.'

In addition, pursuant to Section VII of the Ratepayer Education Trust Agreement, which provides that the Trust may be amended at any time pursuant to order of this Commission, we intend to direct Pacific Bell to draft an amendment to Section 1.4 of the Trust and secure the necessary signatures by a date to be specified in our order. More specifically, the first three sentences of Section 1.4 should be deleted, to be replaced by the following text: "All decisions regarding payment of amounts or disbursements of funds by the Trust shall be made by the Commission, after a review of the recommendations of the Disbursements Committee (the Committee). Pursuant to the Commission's decisions, the Committee shall be composed of five voting members, including one representative from Pacific Bell, one representative from the Division of Ratepayer Advocates (DRA), the Commission's Public Advisor, and two representatives of consumer groups."

As the matter now stands, the Disbursements Committee is charged with the responsibility of approving such grants without explicit Commission order or resolution, and we are concerned that this may constitute an improper delegation of Commission authority, because it may involve more than a ministerial action by the DC members. Under the proposed modification, the DC's work will remain the same except that, instead of issuing decisions of its own to the financial trustee, the DC will make recommendations to the Commission, which will decide whether the DC's recommendations should be approved. The Commission's decision and/or Resolution will be transmitted to the financial trustee thereafter.

Our clarification that the Public Advisor is a voting member of the DC stems from a desire to address an inconsistency between the Decision and the subsequently drafted Trust Agreement. The Decision envisions that the DC is a four-member committee; the Public Advisor is not one of these four members, but is to serve in a mediation and tie-breaking voting role in the event the four member DC is deadlocked. The Trust Agreement, on the other hand, states that the DC is comprised of five members, the four voting members and the Public Advisor. We propose to modify the decision and the Trust Agreement, as necessary, to clarify that the Public Advisor is a member of the DC, with the authority to vote, in addition to mediating disputes that may arise among the other four DC members. This modification is designed to strengthen the Commission's oversight role relative to the DC and to recognize the degree of involvement the Public Advisor has undertaken in connection with the DC subsequent to issuance of the decision.

Second, we propose to modify the decision for consistency with the Trust Agreement (which envisions a "schedule of subsequent meetings" at Section 2.1) to clarify that the DC is authorized to meet "at least annually" rather than "annually." The proposed modification

also reflects a change to Ordering Paragraph 6, consistent with our current view of the delegation issue.²

Third, we propose to modify the decision to make explicit the fact that the DC and the Trust will incur administrative expenses, such as fees for outside tax counsel and other administrative services, and that the Commission will authorize such expenditures up to a dollar limit of \$300,000 per year, or ten percent of annual disbursements, whichever is lower.³ We also propose to add language

2 The proposed modification is as follows:

"Ordering Paragraph 6d (iii) is modified to read: 'The disbursements committee shall meet at least once each year to make disbursements recommendations, based on proposals presented by its members. The financial trustee shall thereafter make the disbursements in accordance with the Commission's decisions and/or resolutions regarding the disbursements committee's recommendations.'"

3 The proposed modification is:

"The following text is added at the end of Ordering Paragraph 6d(iii):

'The disbursements committee may incur expenses, such as expenses for outside tax counsel and other administrative services, in carrying out its duties, so long as such expenditures are approved by the Commission. In addition, the financial trustee is authorized by the Trust Agreement (Section 6.2) to incur reasonable administrative expenses. We wish to set some specific limitations for such expenditures in order to underscore our concerns that, to the fullest extent possible, the trust corpus will be preserved for its intended purpose. To that end, we require that administrative expenses shall not exceed \$300,000 per year, or ten percent of annual disbursements, whichever figure is lower. We view this limitation as quite generous and will not be inclined to consider requests to enlarge it. The financial trustee shall submit quarterly written reports to the Director of the Commission's Advisory and Compliance Division detailing "year to date" expenses. The first report, covering the period January 1, 1988 to September 30, 1988 is due October 30, 1988. Subsequent due dates are January 30, April 30 and July 30 of each year.'

'Further, we hereby give notice that after the first disbursement cycle has been completed, we will review

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to the Decision indicating our intention to review the issue whether this dollar/per cent cap is too generous, after we have had one year's experience with it.

Fourth, we propose to modify the Trust Agreement to eliminate its reference to the obligation of the Commission's General Counsel to determine and resolve any question whether a proposed disbursement may jeopardize the tax exempt status of the Trust (Trust Agreement, p. 5).⁴ This provision of the Trust Agreement is inconsistent with our approval of the DC's request to enter into a contract with an outside law firm for this purpose.

Fifth, we propose to add to the decision a discussion of the need to establish guidelines prohibiting potential grantees and/or their agents from contacting Commissioners and their advisors in connection with specific grant proposals. We believe such a prohibition is necessary in order to facilitate the orderly processes

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these administrative expenditures for reasonableness, and explore the feasibility of lowering the limitation.'

'Finally, we hope that our Public Advisor will assume the responsibility of informing us promptly of problem situations as they arise, so that we may take appropriate action to ensure the reasonableness of such administrative expenses.'"

4 The proposed modification is:

"Pursuant to Section VII of the Ratepayer Education Trust Agreement the Trust may be amended at any time pursuant to order of this Commission, we intend to require Pacific Bell to draft an amendment to Section 2.1 of the Trust Agreement and to secure the necessary signatures by a date to be specified in our order. The specific amendment to Section 2.1 is the deletion of the sentence which currently reads: 'Any question as to whether a proposed disbursement may jeopardize the tax exempt status of the Trust shall be determined and resolved by the General Counsel of the Public Utilities Commission.'

of the Commission, given the number of proposals that may be considered by the DC, and ultimately this Commission.⁵

We regard these proposed modifications as relatively minor "housekeeping" matters, with the possible exception of the clarification of our role in approving the DC's grant recommendations, and the modification of the Public Advisor's voting/DC membership status. The modifications are designed to make the DC's task easier, and to avoid future confusion. In no sense are the modifications an indication that we have changed our commitment to making the RETF a successful program; indeed the revisions underscore our desire that the program succeed.

Therefore, good cause appearing,

IT IS ORDERED that parties who wish to comment on the modifications to D.87-12-067 and the Ratepayer Education Trust Agreement set forth above shall file the original and 12 copies of such comments with the Commission's Docket Office within 20 days of the effective date of this decision. Comments shall address only the

5 We propose to add the following paragraph to the Decision, at page 90, Slip Opinion, immediately preceding Section E:

"Given the interest this program is likely to generate, and the potential number of grantees competing for awards, we find it necessary to state at the outset that it will be our practice not to engage in contacts of any sort with potential grantees and/or their agents on the subject of specific grant proposals. To that end, we direct that the RFPs include language admonishing potential grantees that they and/or their agents are not to contact, by any means, Commissioners or their advisors on the subject of specific grant proposals. We believe that this ban on such contacts is necessary to facilitate this Commission's day-to-day regulatory functions.

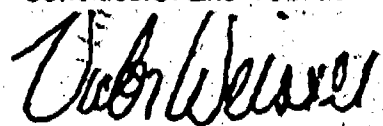
proposed modifications described in this order. The comments shall comply with the applicable rules in Article 2 of the Rules of Practice and Procedure and shall have attached a certificate showing service by mail on all parties.

This order is effective today.

Dated September 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 Weissor, Executive Director

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"Modifying the first three complete sentences appearing on page 89, Slip Opinion, to read: 'Based on the recommendation of the five-member disbursements committee (with each member having one vote), as formally approved by the Commission, the trustee shall proceed with disbursements. In no event shall such disbursements benefit any of the five disbursements committee members. If the Committee is unable to make a decision on a particular disbursement, or its members are otherwise deadlocked, the Commission's Public Advisor shall seek to mediate the dispute.'

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In addition, pursuant to Section VII of the Ratepayer Education Trust Agreement, which provides that the Trust may be amended at any time pursuant to order of this Commission, we intend to direct Pacific Bell to draft an amendment to Section 1.4 of the Trust and secure the necessary signatures by a date to be specified in our order. More specifically, the first three sentences of Section 1.4 should be deleted, to be replaced by the following text: "All decisions regarding payment of amounts or disbursements of funds by the Trust shall be made by the Commission, based on a review of the recommendations of the Disbursements Committee (the Committee). Pursuant to the Commission's decisions, the Committee shall be composed of five voting members, including one representative from Pacific Bell, one representative from the Division of Ratepayer Advocates (DRA), the Commission's Public Advisor, and two representatives of consumer groups."

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