

Decision 89 06 054 JUN 21, 1989

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)

And Related Matters.

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

) OII 84
) (Filed December 2, 1980)

) C.86-11-028
) (Filed November 17, 1986)

**OPINION GRANTING PETITION FOR MODIFICATION
OF RESOLUTION F-621 AND ADOPTING
JOINT RECOMMENDATION RE WORKSHOP/CNP MECHANISM**

This decision addresses two separate matters. First, the decision grants the relief requested by the Division of Ratepayer Advocates (DRA) in its petition for modification of Resolution F-621 relative to the costs of reimbursing public members of the Customer Notification Advisory Committee (CNAC) and Customer Marketing Oversight Committee (CMOC). Second, the decision adopts the recommendations contained in the "Joint Filing of Customer Notification Workshop" filed in compliance with Ordering Paragraph 4 of D.87-12-067, as modified by D.88-06-039.

**DRA's Petition for Modification of
Resolution F-621**

On December 2, 1988, DRA filed its Petition for Modification of Resolution F-621 seeking clarification of Pacific Bell's obligation to bear the costs of reimbursing public members of the CNAC and the CMOC, without corresponding rate recovery.

The CNAC and the CMOC are advisory bodies composed of representatives of Pacific Bell, the Commission staff, and consumer groups. These committees were created by the Commission to deal with various aspects of Pacific Bell's marketing practices, as more particularly set forth in D.86-05-072, D.86-08-026, and D.87-12-067. More specifically, the CNAC has its roots in the Commission mandate that workshops be convened to develop a customer notification and refund program to remedy the effects of certain Pacific Bell marketing practices.¹ The workshop participants proposed a Customer Notification Plan (CNP) which the Commission ordered Pacific Bell to undertake (D.86-08-026, Ordering Paragraph 2). The Commission ordered continuation of the CNP/workshop mechanism in D.87-12-067 (Ordering Paragraph 4).

D.87-12-067 also adopted the CMOC charter, affirming CMOC's overall mandate to:

"ensure that Pacific Bell's customer marketing practices, for both the residential and business sectors, are brought into conformance with the statutes, orders, and appropriate tariffs on file with this Commission and that appropriate safeguards are put in place by Pacific Bell's management to ensure such conformance in the future." (D.86-05-072, mimeo. p. 16; D.87-12-067, mimeo. pp. 90-91.)

DRA notes that CNAC and CMOC public members were not reimbursed for any of their expenses prior to November 9, 1988. On that date, the Commission issued Resolution F-621 setting forth standards for expense reimbursement and public member qualifications for reimbursement in connection with service on

1 In D.86-05-072, the Commission ordered Pacific Bell to cease and desist from violations of Public Utilities Code § 532, General Order 153, and Tariff Rules 6 and 12, in connection with so-called "abusive marketing practices" directed towards residential and business customers.

certain Commission established advisory committees, including CNAC and CMOC. In connection with CNAC and CMOC, the Commission provided that certain expenses of public committee members should be reimbursed by Pacific Bell. In both cases the Commission stated:

"Pacific Bell should be allowed to maintain a memorandum account and seek recovery of its costs in appropriate rate case or attrition proceedings." (Resolution F-621, pp- 4-5.)

In its petition for modification, DRA asserts that the maintenance of memorandum accounts in connection with CNAC and the CMOC is violative of D.86-08-026.

In support of its argument that Pacific Bell should bear the costs of reimbursing the CNAC's public members, DRA notes that the Commission has previously mandated that Pacific Bell and its shareholders shall bear the burden of any costs and expenses incurred as a result of the customer notification and refund plan:

"It is fundamentally clear that were it not for the violations of statute, general order and tariff provisions cited in D.85-06-072, none of the costs and expenses to be incurred as a result of today's order, and required to implement the notice and refund program, would have been incurred. Simply stated, there is no reason to require that any of the costs of the remedial notice and refund program be borne by ratepayers who did not cause the cost of the program, and who will receive no additional benefits from the program, but will merely be restored to the position they would have enjoyed but for these marketing abuses. For this reason, separate and apart from any 'penalty' overtones, these costs should be borne by shareholders." (D.86-08-26, mimeo. p. 19.)

The Commission also ordered Pacific Bell to track costs, expenses, and overheads associated with the notification and refund program to ensure that such costs and overheads were accorded below the line treatment. The Commission further ordered segregated

tracking of extraordinary expense and revenue impacts associated with the notification and refund program to ensure that these impacts would not affect future test year estimates and projections.

DRA also argues that it is inconsistent with D.86-08-026 to treat the costs associated with CMOC, including the reimbursement of advisory committee expenses, differently than the costs associated with CNAC. The CMOC was as much a part of the Commission's remedial response to Pacific Bell's abusive marketing practices as the CNP/workshop mechanism. Therefore, DRA submits that it would also be improper to require innocent ratepayers to bear the expense burdens of the CMOC.

Neither Pacific Bell nor any other party filed a formal response to DRA's Petition for Modification of Resolution F-621. Consequently, there does not appear to be any opposition to DRA's petition for modification, and based on the arguments submitted by DRA, it is clear that Resolution F-621 must be modified to delete the proviso for memorandum account treatment in connection with both CNAC and CMOC in order to achieve consistency with previous Commission mandates. The CNAC-related reimbursement costs are clearly among those considered by the Commission in D.86-08-026 as appropriately borne by Pacific Bell shareholders. The costs incurred to reimburse the expenses of public members of CMOC should be treated similarly, since these costs would not have been incurred in the absence of the marketing practices proscribed in D.86-05-072. Resolution F-621 will be modified accordingly, as shown in Appendix A to this decision.

Termination of the Workshop/CNP Mechanism

In D.87-12-067, our Second Interim Opinion on Pacific Bell's revenue requirement, we resolved several issues in connection with the marketing abuse problem. In this decision, we ordered Pacific Bell to establish the Ratepayer Education Trust Fund, and we adopted the CMOC charter. We also required changes to

proposal, and continuation of the customer notification and refund process.

We required Pacific Bell to develop and test further informational and corrective customer notification/refund measures and to undertake a second CNP campaign in concurrence with those already participating in the CNP workshops. We further required Pacific Bell to file a compliance filing 20 days prior to undertaking the second CNP campaign, briefly outlining the details of this second effort.² We also specified that the workshop/CNP mechanism would continue as a vehicle to address the marketing abuses covered by D.86-05-072 until further Commission order, and required the workshop participants to make a joint filing recommending a schedule for ultimately terminating the workshop/CNP mechanism (D.87-12-067, Ordering Paragraph 4). In D.88-06-039, we granted the request of the workshop participants to delay the required submission of this joint filing until after Pacific Bell had reported on the outcome of the second CNP campaign, as required by D.87-12-067 (Ordering Paragraph 3).

On April 12, 1988, Pacific Bell filed its compliance filing indicating its plans to begin the second CNP campaign within 20 days. Pacific Bell indicated that it had submitted a detailed plan to the workshop participants, had received comments and had incorporated several changes with its plan in response to those comments. Pacific indicated that its second effort would be directed at residence customers with COMMSTAR features (excluding Call Waiting as a single feature) and/or Call Bonus Plans with service order activity between January 1, 1985 and October 1, 1986,

² The decision also specified that: "All costs and expenses associated with the activities noted in this ordering paragraph, as well as Ordering Paragraph 3, shall be borne by Pacific Bell's shareholders, consistent with the ratemaking treatment ordered in D.86-08-026." (D.87-12-067, Ordering Paragraph 2.)

and who did not respond to the first notification campaign. Pacific Bell indicated that its residence campaign would include a combination of direct mail (letters) and outbound calls. Small business customers (1 to 5 lines) with COMMSTAR (excluding Call Waiting as a single feature) with order activity between January 1, 1985 and October 1, 1986, and who did not respond to the first notification campaign, would be notified by letter.

On January 10, 1989, Pacific Bell filed its compliance filing reporting the results of the second notification effort. In its filing, Pacific Bell indicated that the second effort began as planned on May 3, 1988, and that the business campaign ended on September 2, 1988. Pacific Bell shared the results of the business campaign at a meeting of the workshop participants on September 13, 1988 at which time a readout of a customer satisfaction survey was given by Field Research. The residential notification effort was completed by October 31, 1988, and the results were shared with the workshop participants at a meeting held on November 8, 1988. It was agreed that the second notification plan was highly successful.

In its compliance filing, Pacific Bell reported that the second CNP resulted in refunds to residential customers of \$30,257,384 and to business customers of \$414,092, for a total of \$30,671,467. Total corresponding expenses were \$3,723,876. Pacific Bell also reported updated results from the first notification plan, indicating that a total of \$32,293,300³ was refunded during the first CNP at a total expense of \$12,133,000. Therefore, total refunds as a result of both the first and second CNP campaigns were approximately \$63,000,000 and total expenses were approximately \$15,800,000. A total of approximately 494,000 customers received refunds as a result of both campaigns.

³ Refunds to residential and business customers totaled \$31,394,000 and \$899,300 respectively.

On February 6, 1989, the workshop participants filed their joint filing containing their recommendation relative to terminating the workshop/CNP mechanism. The workshop participants noted that Pacific Bell had kept them informed of the progress and results of the second CNP at meetings held September 13, 1988 and November 8, 1988. The workshop participants agreed that the second notification effort was highly successful and was now complete. Therefore, they recommended that the workshop mechanism be terminated.

Based on our review of the extensive compliance filings and supporting data submitted in connection with the second notification effort as required by the ordering provisions of D.87-12-067, we agree that the second notification effort is complete and that the workshop mechanism should be terminated.

Findings of Fact

1. In D.86-08-026, this Commission provided that the costs and expenses of the customer notification and refund program adopted in that decision were more appropriately borne by Pacific Bell's shareholders than its ratepayers due to the underlying nature of the marketing abuses which triggered the need for the proposal. (D.86-08-026, Ordering Paragraph 5.)

2. On November 9, 1988, the Commission issued Resolution F-621 providing for reimbursement of CNAC and CMOC members by Pacific Bell, and allowing the utility to maintain a memorandum account and seek rate recovery of such reimbursement costs. DRA has petitioned for modification of Resolution F-621, asserting its inconsistency with prior Commission decisions, and no party has formally opposed DRA's petition.

3. This Commission has specified that all costs and expenses associated with the second notification and refund plan are to be borne by Pacific Bell's shareholders consistent with the ratemaking treatment ordered in D.86-08-026. (D.87-12-067, Ordering Paragraph 2.)

4. The costs of reimbursing CNAC's public members are costs or expenses associated with the customer notification and refund plan.

5. Since the CMOC was included in the Commission's remedial orders relative to Pacific Bell's abusive marketing practices, in that it was designed to ensure that the utility's business and residential marketing practices were brought into conformance with appropriate statutes, orders, and tariffs and to ensure future conformance, the costs of reimbursing CMOC's public members fall within the category of costs and expenses appropriately borne by Pacific Bell's shareholders, consistent with D.86-08-026.

6. On April 12, 1988, Pacific Bell filed a compliance filing as required by Ordering Paragraph 2 of D.87-12-067, indicating that it intended to commence its second customer notification and refund plan within 20 days.

7. Pacific Bell completed its second CNP for business customers on September 2, 1988 and for residential customers on October 31, 1988. Pacific Bell shared the results of the second CNP effort with the workshop participants on September 13 and November 8, 1988.

8. On January 10, 1989, Pacific Bell submitted a compliance filing as required by Ordering Paragraph 3 of D.87-12-067 indicating that the second CNP campaign was complete, and reporting total refunds of \$30,671,467 and total expenses of \$3,723,876. Pacific Bell also updated the results of the first CNP campaign, indicating total refunds of \$32,293,300, and total expenses of \$12,133,000. Pacific Bell also submitted the final report from the Field Research Corporation detailing levels of customer satisfaction with the second CNP campaign.

9. On February 6, 1989, pursuant to Ordering Paragraph 4 of D.87-12-067, a joint recommendation was submitted by the workshop participants indicating that the second CNP campaign was complete and that the workshop/CNP mechanism should be terminated. This

participants indicating that the second CNP campaign was complete and that the workshop/CNP mechanism should be terminated. This joint recommendation was signed by representatives of Toward Utility Rate Normalization (TURN), Public Advocates, Consumer Action, Pacific Bell, the Commission Advisory and Compliance Division (CACD), DRA, and the Commission's Consumer Affairs Branch.

Conclusions of Law

1. Resolution F-621 should be modified to delete its references to memorandum account treatment and potential rate recovery for expenses incurred by Pacific Bell in connection with expense reimbursement of public members of the CNAC and the CMOC, and to clarify that Pacific Bell's shareholders are responsible for such expenses in accordance with the provisions of D.86-08-026 and D.87-12-067.

2. The joint recommendation of the workshop participants submitted February 6, 1989 in compliance with Ordering Paragraph 4 of D.87-12-067, should be adopted.

ORDER

IT IS ORDERED that:

1. The relief requested in DRA's Petition for Modification is granted, and Resolution F-621 is modified by deleting the sentence which reads: "Pacific Bell should be allowed to maintain a memorandum account and seek recovery of its costs in appropriate rate case or attrition proceedings" and replacing that sentence with the following text: "Such expenses are to be borne by Pacific Bell's shareholders, not its ratepayers."

2. The resolution in its modified form is set forth in Appendix A.

2. The workshop/CNP mechanism, as more particularly described in D.86-05-072, D.86-08-026, and D.87-12-67 is hereby terminated.


This order is effective today.

Dated JUN 21, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

- 10 -


Victor Weissert, Executive Director
ps

APPENDIX A

Resolution F-621, as Amended by Decision ~~89-06-054~~

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND
COMPLIANCE DIVISION
Accounting & Finance Branch

RESOLUTION F-621
November 9, 1988

R E S O L U T I O N

RESOLUTION F-621, COMMISSION RESOLUTION TO
ADOPT AN INTERIM ADVISORY COMMITTEE STANDARD OF
EXPENSE REIMBURSEMENT FOR COMMISSION ESTABLISHED
ADVISORY COMMITTEES CREATED TO PROVIDE ADVICE OR
ADMINISTRATIVE OVERSIGHT OF TRUST FUNDS AND OTHER
PROGRAMS.

SUMMARY

By several recent decisions the Commission has ordered the formation of various Advisory Committees responsible for the administration of certain trust funds and other programs funded by either ratepayer contributions or shareholder funds. These committees have emerged from issues identified in Commission proceedings, or are in response to specific legislative action by the California State Legislature. In order to receive the benefit of public input or specific expert knowledge, the Commission had directed that these Advisory Committees include non-utility members selected from consumer groups for which the trust or program was instituted. While the utility members are reimbursed for their expenses by their respective employers, consumer representatives are possibly self-employed or employed by a third party and are not always reimbursed for their expenses. To assure the continued participation by non-utility representatives to the Advisory Committees, this Resolution establishes an interim Advisory Committee Standard of Expense reimbursement which henceforth shall apply to certain Advisory Committees.

The interim Advisory Committee Standard of Expense Reimbursement for attending scheduled meetings or Commission ordered workshops or formal hearings directly related to the Advisory Committee's duties shall be: actual expenses up to the current limits in effect for such items as travel, meals, parking and other incidentals as are applicable for Commission staff on official duty allowable under Government Code Section 19820. At some subsequent time, the Commission may review expense reimbursement standards and adopt a final standard applicable to all Advisory Committees.

BACKGROUND

The Commission has currently established the following Advisory Committees whose members are not reimbursed for their expenses:

1. Customer Notification Advisory Committee - Pacific Bell; created by Decision 87-12-067. This advisory Committee performs the following duty:

Prepare a customer notification of marketing abuses in order to attempt to make customer refunds to appropriate customers.

Membership is composed of Pacific Bell, Commission Staff, and 3 public members not affiliated with the utilities or the Commission. None of the public members are reimbursed for expenses.

There is no Commission authorized funding for this Advisory Committee.

2. Customer Marketing Oversight Advisory Committee - Pacific Bell; created by Decision 87-12-067 and 86-05-072. This Advisory Committee performs the following duties:

Prepare studies on the marketing issues involved in Lifeline service, telemarketing practices, and the issue of sales quotas.

Membership is composed of Pacific Bell employees, 1 GTE of California employee, Commission Staff, and 8 public members not affiliated with the utilities or the Commission. None of the public members are reimbursed for expenses.

There is no Commission authorized funding for this Advisory Committee.

3. Women & Minority Business Enterprises Advisory Board; created by Decision 88-04-057 and subsequently modified by Decision 89-09-024. This Advisory Committee performs the following duties: select an operator for a Clearinghouse of Women & Minority Owned Business Enterprises. The Clearinghouse will verify that the businesses are in compliance with the requirements of General Order 156.

Membership is composed of 10 utility representatives, 1 Commission Staff, and 5 public members not affiliated with the utilities or the Commission. There is no expense reimbursement.

This Advisory Committee is financed by charges in customer rates authorized by the Commission.

There are other Advisory committees currently authorized by the Commission which do allow for various levels of recovery of fees and expenses. They are not subject to this Resolution.

Eligibility

To be eligible for expense reimbursement, an Advisory Committee must be specifically established by an Order of the Commission. Such an Advisory Committee must be created for the expressed purpose of providing specific service to the regulated utility or its ratepayers in an ongoing fashion not suited to the conventional rate case and testimony process for adoption of a public policy by the Commission. The Advisory Committee must have an ongoing role rather than a single analytical role which would be better suited by a single contract for consultant analysis and testimony. To qualify for reimbursement, Advisory Committee members must attend scheduled meetings of the Advisory Committee, Commission ordered workshops or formal hearings directly related to the Advisory Committee's Duties.

It is further recommended that no participant who is reimbursed for participating in a specific Commission proceeding under Public Utilities Code [Code] Sections 1801 - 1808 should be allowed to include subsequent service on a resulting Advisory Committee in the request for expense reimbursement. Any such intervenor who is appointed to an Advisory Committee should only receive expenses for Advisory Committee Service. To be eligible for intervenor expense reimbursement while litigating an Advisory Committee related issue, an Advisory Committee member must withdraw from Committee membership. After resigning, the former Advisory Committee member is eligible to apply for funding under the Commission's intervenor expense reimbursement standards. An Advisory Committee member may file for intervenor compensation in unrelated proceeding while still serving on an Advisory Committee and receiving their expenses.

Standard of Expense Reimbursement

The Commission has the authority to set its own level of payment for service on committees in general. There are specific legal guidelines for State Funded committees, committees which in effect are paid for by the state out of its general funds. Most if not all of the Advisory or Management Committees authorized by the Commission are discretionary, funded by either specific charges included in utility rates and collected from customers or charged to the stockholders of the utilities.

In establishing a Standard of Expense Reimbursement the Commission should consider the reasonable guidelines available to it. These include the rules for compensating its own employees

for business related expenses [Government Code Section 19820, under which the Department of Personnel Administration (DPA) established rules and regulations published on the California Administrative Code, Title 2, Division 1, Chapter 3, Article 2]. The Commission may also consider the rules for statutory authorized Advisory Boards [Government Code Section 11564.5]. Normally these Advisory Boards only recover expenses, but an exception is allowed for a per diem salary of \$100. In Decision 88-07-071, dated July 22, 1988 the Commission authorized an exceptional Committee for San Diego Gas & Electric Company, the third such Exceptional Committee authorized for nuclear decommissioning. Reference for such fees can be found in the fees and per diem typically paid to outside members of the Board of Directors of the regulated utility(ies) which may be affected by such committees performing similar duties.

The Commission Advisory & Compliance Division's Accounting & Finance Branch has reviewed the possible interim Standard of Expense Reimbursement and recommends the adoption of the following:

Advisory Committees.

The Standard of Expense Reimbursement for Advisory Committee members for attending scheduled committee meetings or Commission ordered workshops or formal hearings directly related to the Advisory committee's duties shall be that reasonable expenses are reimbursed in accordance with DPA regulations for Exempt Employees [Government Code Section 19820]. This expense reimbursement shall be up-dated as Section 19820 of the Government Code is up-dated from time to time.

Unique Expenses, if authorized by the Commission at the time of formation of the Advisory Committee, may be recovered for such items as assistance to the disabled [Readers for the sight-impaired, Signers for the hearing-impaired, etc.] to the extent that such Committee members provide a unique or special contribution to the Advisory Committee. Otherwise such costs are the personal costs of the Committee Member.

Method of Funding Advisory Committees.

The Advisory Committees discussed above must be the subject of an Order authorizing expense reimbursement. The CACD recommends that the public members of the Advisory Committees should be reimbursed in the following fashion:

1. Customer Notification Advisory Committee - Pacific Bell; This Advisory Committee should be reimbursed by Pacific Bell. Pacific Bell should be

allowed to maintain a memorandum account and seek recovery of its costs in appropriate rate case or attrition proceedings. Such expenses are to be borne by Pacific Bell's shareholders, not its ratepayers.

2. Customer Marketing Oversight Advisory Committee - Pacific Bell; This Advisory committee should be reimbursed by Pacific Bell. Pacific Bell should be allowed to maintain a memorandum account and seek recovery of its costs in appropriate rate case or attrition proceedings. Such expenses are to be borne by Pacific Bell's shareholders, not its ratepayers.

3. Women & Minority Business Enterprises Advisory Board; This Advisory Committee should be reimbursed by adding the costs of the Advisory Committee to the costs of the Clearinghouse which are then allocated in total to participating utilities.

The CACD recommends that at some subsequent time the Commission should reexamine the policy for compensating both these Advisory Committees under this interim Standard of advisory Committee Expense Reimbursement with a view to establishing a uniform policy for all Advisory Committees currently in existence or which may be authorized in the future.

FINDINGS

1. It is reasonable that public members of Commission authorized Advisory Committees receive a fair expense reimbursement for their services.

2. The fair Advisory Committee Standard of Expense Reimbursement shall be reasonable expenses as defined by the current government Codes and Regulations as discussed earlier.

3. Discretionary exceptions to the Advisory Committee Standard of Expense Reimbursement may be granted by the Commission on a case by case basis.

4. Intervenors reimbursed under Code Sections 1801 - 1802 should only receive the Advisory Committee Standard of Expense Reimbursement for any service on Advisory Committees.

5. Employees, officers or agents of regulated public utilities are not eligible for expense reimbursement.

6. It is reasonable to reimburse the public members of the Advisory Committees and to charge the costs as recommended by the CACD.

IT IS ORDERED, that:

1. It is reasonable that public members of certain Advisory Committees are reimbursed for their expenses.

2. Certain Commission authorized Advisory Committees shall be reimbursed at the interim Advisory Committee Standard of Expense Reimbursement contained in this Resolution.

3. The affected Advisory Committees shall be reimbursed as discussed in the Resolution and the costs charged against the utilities or the Trust Funds as described in the Resolution.

4. Code Sections 1801 - 1802, Intervenor's Fees and Expenses, do not apply to these Advisory Committees.

This Resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of November 9, 1988. The following Commissioners approved it:

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners



Executive Director