

Decision 90 02 043 FEB 23 1990

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
intrastate 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)

O P I N I O NI. Summary

This decision reviews the accomplishments and end-of-term recommendations of the Customer Marketing Oversight Committee (CMOC) established by the Commission in Decision (D.) 86-05-072 (the cease and desist order) and D.87-12-067 to redress certain aspects of Pacific Bell's marketing activities. We adopt CMOC's final recommendations including recommended external safeguards designed to prevent future marketing abuses. We also lift a portion of the cease and desist order which relates to Pacific Bell's cold-selling telemarketing activities. Finally we adopt CMOC's recommendation that specific revisions to General Order (GO) 153 designed to clarify eligibility for Universal Lifeline Telephone Service (ULTS) be considered in the ongoing ULTS investigation (I.83-11-005).

II. Background

A. The Commission's Decision to Create CMOC

In D.86-05-072 we determined that Pacific Bell had engaged in various marketing abuses in violation of Public Utilities (PU) Code § 532, Tariff Rules 6 and 12, and GO 153, and we ordered the utility to cease and desist from these violations.¹ We also directed that workshops be held to address customer notification and refund procedures² and to develop a proposal for establishing a customer marketing oversight committee whose overall mandate was to "ensure that Pacific Bell's marketing practices, for both business and residential sectors, are brought into conformance with the statutes, orders, and other appropriate

1 Pacific Bell violated PU Code § 532 by conducting an unauthorized trial program relative to enhanced services. In its "package selling" efforts, Pacific Bell violated Tariff Rule 12 which requires a quotation or full itemization of recurring and nonrecurring charges applicable to the service and equipment a customer seeks. Pacific Bell violated Tariff Rule 6 relative to establishment and reestablishment of credit, by applying the deposit waiver provisions of the tariff inconsistently and by failing to give certain customers the benefit of the waiver provision in accordance with the terms of the tariff. Pacific Bell violated GO 153 § 1.3.21, the procedure for administration of the Moore Universal Telephone Service Act, by improperly applying the definitional criteria for Lifeline service eligibility (D.86-05-072, Conclusions of Law 1 through 4).

2 In D.86-08-026 we adopted a plan based on the workshop participants' recommendations, for customer notification and refunds. In D.87-12-067 we ordered Pacific Bell to undertake a second notification and refund plan (D.87-12-067, Ordering Paragraph 2). \$62,964,767 had been refunded to Pacific Bell's ratepayers at a \$15.8 million cost to shareholders, as of November 1988. (January 9, 1989 Filing of Pacific Bell in Compliance with Ordering Paragraph 3 of D.87-12-067.) As a further response to the marketing abuse episode, we directed Pacific Bell to set aside \$16.5 million in a Ratepayer Education Trust Fund (D.87-12-067, Ordering Paragraph 6).

tariffs on file with the Commission and that necessary safeguards are put in place for the future (D.86-05-072, mimeo. p. 16). We mandated an end to the utility's cold-selling telemarketing activities and sales quota program until further order, following review of these practices by the CMOC (D.86-05-072, mimeo. p. 19 and Ordering Paragraph 2).

B. CMOC's Responsibilities

Thereafter our Commission Advisory and Compliance Division (CACD) staff and the workshop participants developed a charter for the CMOC, which was adopted in D.87-12-067 (mimeo. pp. 90-93 and Appendix C). In that decision, we directed the CMOC to review eight specific areas in furtherance of its overall mandate:

- "a. Business and residence incentive plans for salaried and nonsalaried employees.
- "b. Business and residence quota plans (or similar plans, e.g., goals, objectives, targets, etc.) for both salaried and nonsalaried employees.
- "c. Trial offerings of services.
- "d. Renaming and packaging of services.
- "e. Administration of deposit practices.
- "f. Administration of Universal Lifeline Service.
- "g. Incentive, quota, or similar plans in other Pacific Bell organizational entities.
- "h. 'Cold-selling' or other telemarketing activities." (D.87-12-067, mimeo. p. 91.)

We placed special emphasis on the need for CMOC to review the manner in which Pacific Bell is administering ULTS to ensure conformity with GO 153 (D.87-12-067, mimeo. p. 91). We also cited the current prohibition on cold-selling or telemarketing activities (D.86-05-072, Ordering Paragraph 2), and stated: "We would expect

that any recommendation made by the CMOC at the end of its term would address the question whether this ordering paragraph should be modified, and if so, how." (D.87-12-067, mimeo. p. 92.)

In addition, we directed the CMOC chairperson, a member of our CACD staff, to submit informational compliance reports to us, including a final report summarizing CMOC's findings, conclusions, and recommendations following expiration of its term on May 30, 1989. (D.87-12-067, Ordering Paragraph 7.)

As required by D.87-12-067, the members of CMOC represented many diverse groups, including utility industry representatives, Pacific Bell managers and employees, the Commission staff, consumer advocacy groups, residential and business telephone customers, senior citizens, and various minority communities. A list entitled "CMOC Membership," submitted by the CMOC chairperson, is attached to this opinion as Appendix A.

During its 18-month existence, CMOC met formally on 10 occasions, and developed numerous recommendations in response to the Commission's concerns. For example, in November 1988, CMOC reviewed proposed revisions to Pacific Bell's compensation plan for certain marketing employees (known as Account Executives-Telecommunications, or AETs) and recommended Commission approval. In response, we granted Pacific Bell a waiver from the provisions of D.86-05-072 in order to permit it to proceed with its proposal (D.89-02-048).

CMOC filed three informational reports with the Commission. The first, filed on November 4, 1988, dealt with a ULTS eligibility issue. The second, filed April 26, 1989, reported on the implementation of plans for an independent external audit mechanism designed to assist Pacific Bell's management in developing and refining internal safeguards to prevent future

marketing abuses.³ A third report, filed June 30, 1989, contained an extensive summary of CMOC's efforts over the prior 18 months, and its final recommendations.

This decision analyzes the recommendations contained in CMOC's final report, with particular emphasis on CMOC's recommendations in two areas: (1) ULTS-related clarifications and (2) the development of internal and external safeguards designed to prevent future marketing abuses.

We take this opportunity to thank the CMOC members for their many contributions, for it is clear in reviewing CMOC's final report that much time and effort were expended by these individuals, and that the results of these efforts were considerable.

III. CMOC's Final Recommendations

A. ULTS Eligibility

In both its November 4, 1988 and June 30, 1989 reports, CMOC raised the issue of the appropriate definition of "residence"

3 The April 26 report contained a separate recommendation that the utility be permitted to proceed with a trial offering of Voice Mail in Milpitas and San Pedro which included a proposed informational marketing campaign. On August 1, 1989, the Commission's Acting Executive Director informed Pacific Bell's State Regulatory office that CMOC's recommendation could not be implemented while the cease and desist order was in effect. While CMOC's June 30 report had recommended (at p. 16) that the cease and desist order be lifted "upon delivery of the benchmark measurements for the external audit, conducted by Field Research Corp. to the Commission and former CMOC members," the benchmark study was not delivered to the Commission until December 5, 1989. Therefore, as of August 1989, the Commission had no basis for acting on CMOC's April 26 Voice Mail marketing campaign recommendation or its June 30 recommendation concerning the cease and desist order.

for purposes of processing ULTS requests involving a second service at the same residence address.

GO 153 § 1.3.21 defines "residence" as:

"The residence (dwelling unit) shall consist of that portion of an individual house or building or one flat or apartment occupied entirely by a single family or individual functioning as one domestic establishment.

"A room or portion of a residence occupied exclusively by an individual not sharing equally as a member of the domestic establishment may be considered a separate dwelling unit for the application of Universal Lifeline Telephone Service."

According to CMOC, when confronted with second requests for ULTS to a residence premises already served, Pacific Bell had been interpreting this provision to support the prospective customer's eligibility "if the kitchen and bathroom were not shared." (November 4 report, p. 2.) In response to criticism and customer complaints about this expanded reading of § 1.3.21, Pacific Bell proposed, as an interim step, to revise its internal training materials and advise its employees to find eligibility if the prospective customer answered the following questions affirmatively:

- "A. Do you pay rent and are you financially independent with your own source of income?
- "B. You are not claimed on someone else's tax return? [SIC]" (November 4 report, p. 3.)

As a long-term measure, the utility indicated that it would seek a change in GO 153 and its related tariff to clarify this eligibility question.

As a follow-up measure, CMOC recommends specific modifications to GO 153 which track Pacific Bell's interim guidelines (discussed supra), while also significantly broadening the definition of "Total Household Income." CMOC also recommends

modifications to GO 153 and Tariff A5 which delete the existing definitions of "household" and establish new definitions for "subscriber" and "household member" keyed to the concept of tax return dependent status. These proposed modifications are listed in Appendix B.

CMOC requests that these proposals be considered in the Commission's ongoing investigation of lifeline service (I.83-11-005). Since the impact of the proposed GO and tariff revisions extends beyond the bounds of this proceeding, we will refrain from endorsing or otherwise commenting on the merits of the proposed modifications in this decision. Further, in the absence of a specific case or controversy between the utility and an affected customer, we do not address the question whether Pacific Bell's interim guidelines comport with GO 153 or Tariff A5, because to do so would be tantamount to rendering an advisory opinion without the pertinent facts before us. Instead, we will serve this opinion, including the recommended revisions found in Appendix B, on the parties to I.83-11-005 so that those most impacted by the proposed revisions may actively consider these proposals pursuant to the instructions of the administrative law judge (ALJ) assigned to that investigation.

B. Internal Safeguards

At an early date, CMOC agreed that Pacific Bell should provide a complete report showing its compliance with existing statutes, orders and tariffs, and describing its internal safeguards designed to ensure compliance. Pacific Bell submitted this report to CMOC in May 1988. The report discussed various changes in corporate culture and other corrective measures taken by management following issuance of the cease and desist order. The utility included a "pre and post cease and desist order" comparison of specific tariff application practices, and also indicated

relevant current or planned safeguards (CMOC's June 30, 1989 report, pp. 4-5).⁴

Following further discussion of the report by CMOC, Pacific Bell decided to retain the Center for Ethics and Social Policy at Berkeley (the Center), to independently review the report and make a presentation to CMOC. CMOC approved Pacific Bell's decision. The Center conducted 150 interviews and reviewed an unspecified number of documents; it reported to CMOC that numerous interrelated internal safeguards should be implemented (CMOC's June 30, 1989 report, pp. 5-6).⁵ In response to the Center's recommendations, Pacific Bell established an officer-level Advisory Council on Ethics, an Ombudsman, an expanded training program on ethics and ethical conduct, "participative management programs," and a sales quota policy (CMOC's June 30, 1989 report, p. 9).

CMOC's final report specifically highlights the appointment of a company ombudsman in April 1989. CMOC members Feraru and Gnaizda met with the ombudsman and his staff and reported that they were impressed by the qualifications of the ombudsman and his staff (CMOC's June 30, 1989 report, pp. 10-11), although they believed the ombudsman would be more effective if (1) he or she held a fixed-term and (2) the utility adopted and publicized an explicit policy protecting those who contact the ombudsman from any form of reprisal.

4 For example, Pacific Bell described the instruction and training given its employees in order to ensure that they correctly apply the tariffs governing the administration of deposits.

5 CMOC's June 30 report does not provide a detailed description of the Center's specific recommendations, however.

CMOC also reports that the utility has implemented the following additional internal safeguards since issuance of the cease and desist order:⁶

1. Itemized Billing, as required by this Commission in a series of orders following issuance of the cease and desist order.
2. Confirmation letters to customers ordering new services.
3. Memoranda of Agreement between Pacific Bell, the Communications Workers of America, and Telecommunications International Union regarding Local Common Interest Forums and Revenue Generation.
4. A Team Award Plan with focus on team performance.
5. Revised training material.
6. Establishment of feedback channels.
7. Quality control checks for an "early warning system."

On the basis of the information recited above, CMOC reports to us that "Pacific is in compliance with tariffs on file with the Commission, General Orders, and Statutes" and "Pacific has implemented several new safeguards, e.g., position of Ombudsman, sales quota policy" (CMOC's June 30 report, pp. 14-15). Because we lack specific information about the basis for this judgment, we cannot endorse it uncritically. Indeed this lack of specificity about current and prospective internal safeguards and their interrelatedness, if any, underscores the wisdom of CMOC's

6 We infer from CMOC's June 30 report that these safeguards were implemented by Pacific Bell independent of any recommendation of the Center. Nonetheless in most cases, insufficient detail is provided in CMOC's report to enable us to do more than list these safeguards without further comment on their adequacy.

recommended external safeguards, subsequently discussed, and prompts our endorsement of CMOC's effort to ensure additional ratepayer protection.

Nonetheless we applaud Pacific Bell's responsiveness and creativity in developing a series of internal safeguards designed to confront directly the internal problems that fostered these marketing abuses. Because they represent an improvement over the "pre-cess and desist order" environment, we encourage Pacific Bell to continue these safeguards as long as they are effective. However in the absence of a demonstrated need for our intervention, we leave the mechanics of this task to management. Therefore, for example, we make no specific order in response to the Feraru/Gnaizda recommendations for improving the effectiveness of the ombudsman.

C. External Safeguards

In its April 26, 1989 report, CMOC noted that its Division of Ratepayer Advocates (DRA) members had recommended adoption of an external audit mechanism to focus on the needs of Pacific Bell's residential and small business customers. After a process of internal discussion and negotiation, CMOC approved DRA's suggestion. In April 1989 CMOC approved the selection of Field Research Corporation (FRC) to conduct the study, and indicated that it intended to discuss a study plan, the survey questionnaire, and performance standards, and then recommend the independent external audit mechanism to the Commission in a formal filing.

According to CMOC's final report, the external safeguard audit will consist of (1) the initial (or benchmark) study, and (2) quarterly reports to be submitted to the Commission and all former CMOC members. CMOC recommends that the CACD be given the responsibility to review these quarterly reports to determine if any action is required. (CMOC's June 30 report, p. 8.) CMOC also recommends that the external safeguard audit remain in place for five years from the submission of the first quarterly report,

unless terminated earlier by order of the Commission. Finally, CMOC recommends that the cease and desist order be lifted upon delivery of the external audit benchmark measurements to the Commission and former CMOC members (CMOC's June 30 report, p. 16). On December 5, 1989, CMOC delivered FRC's benchmark measurements to Commissioners and the assigned ALJ.

FRC states that its broad objective is "to provide an independent, objective, on-going 'audit' of Pacific Bell representatives' handling of calls that result in some type of service order activity to [ensure] that customers are (1) not being pressured into taking services they do not want or need, (2) not receiving services they do not want or did not order, and (3) being told about the availability of Universal Lifeline Service if they are New Connects and qualify for the service." (FRC Benchmark Study, p. i.) Customers are asked by FRC's interviewers to respond to specific questions.⁷ Because customers can forget and/or misstate what actually transpired during such a call, the benchmark measurement is necessary as a gauge of the amount of error in respondent recall. Performance can then be monitored by comparing

7 Survey questions include the following:

"Were you satisfied with the way the Pacific Bell representative handled your questions and requests?

"Did you feel pressured at any time during the conversation to sign up for some type of service that you did not really feel you wanted or needed?

"Did you happen to end up ordering something that you did not want or that you don't really need?

"You indicated earlier that you told the service rep you did not want (SERVICE). Let me describe (SERVICE) a little bit more. (SERVICE DESCRIBED.) Now that you know a little more about that service, are you sure that you told the service rep that you did not want it?" (FRC Benchmark Study.)

subsequent survey results with that benchmark. Since the "forgetting/confusion" factor should remain relatively constant across time, any significant deviations from the benchmark in subsequent measures can be interpreted as "real" increases or decreases in the particular phenomenon being measured (e.g., being told about Lifeline, getting a service one does not want, etc.). Over the five-year life of the audit, monitoring will be done on an ongoing basis and the data will be summarized quarterly. Interviewing will be done weekly or biweekly, depending on the customer "cell," or group, involved. Every quarter the data collected and certain key measures will be compared with the benchmark measures. Statistical tests will be applied to the data and any differences which are statistically significant at the .05 level of confidence will be identified. (FRC Benchmark Study, p. A-1.)

FRC's benchmark study was taken over the five-week period July 5 to August 8, 1989. FRC notes that the cease and desist order was in effect during this period, and that "there was general agreement Pacific Bell was doing everything possible to ensure that customers were receiving only the services they wanted or needed and that eligible customers were being told about Universal Lifeline Service." (FRC Benchmark Study, p. ii.)

The study universe includes all residential and small business (1-5 Line) customers with the following recent service order activity: Change orders, New connects, transfers, and those record corrections which result in adding Call Bonus. Within this universe, the study is designed to provide sufficiently large

samples of customers in each of the following cells⁸ to permit monitoring of these groups on a quarterly basis:

<u>Residential Customers</u> <u>(Systemwide)</u>	<u>Small Business Customers</u> <u>(Systemwide)</u>
Bay VP Organization	Bay VP Organization
North VP Organization	North VP Organization
Los Angeles VP Organization	Los Angeles VP Organization
South VP Organization	South VP Organization
Low Income	
Low-Income Seniors	
Hispanics	
Blacks	
Asians (Chinese, Vietnamese, Korean)	
Non-English Interviews (Total)	
Non-White (Total)	

In addition, the study design plan provides for monitoring
(1) customers who order Call Bonus and/or COMMSTAR services and
(2) New Connects who qualify for Lifeline and therefore should have been told about Lifeline. Further details regarding FRC's interviewing method, sampling procedures, and survey method are outlined in the Benchmark Study (pp. v-vii and A-1-A21).

The services customers were asked about are shown below:

<u>Residence</u>	<u>Small Business</u>
Call Waiting	Call Waiting
Call Forwarding	Call Forwarding
Speed Dialing	Speed Dialing
Three-Way Calling	Three-Way Calling
Call Bonus Plan	
Intercom Plus	Intercom Plus
Touchtone	Touchtone
Inside Wire Repair Plan	Inside Wire Repair Plan
	COMMSTAR II

⁸ A sample of 300 interviews per cell of interest was established as the minimum needed for monitoring performance on a quarterly basis.

Having reviewed the goals and mechanics of the Benchmark Study, we agree with CMOC that the five-year external audit of residence and small business customers is a significant safeguard (CMOC's June 30, 1989 report, p. 15). The study appears to be constructed in a manner that will carefully track changes in key marketing abuse-related measurements, by surveying those categories of customers most impacted by past abuses about change order activities involving services identified in the Commission's cease and desist, and follow-up, orders. The quarterly reporting mechanism will allow the Commission to monitor these changes and to take appropriate action if necessary.

Therefore we approve CMOC's recommended external safeguard audit as proposed, while providing additional guidance to the parties in a few key areas.

First, CMOC recommends that the initial quarterly report cover the fourth quarter of 1989, with a submission date no later than 60 days thereafter (CMOC's June 30, 1989 report, p. 16). Given the issuance date of today's decision, we will require that the first quarterly report cover the first quarter of 1990 and be submitted on or before May 31, 1990. Subsequent quarterly reports will be submitted no later than 60 days after the end of a quarter. We will impose on Pacific Bell the responsibility for filing the quarterly reports as compliance filings in the New Forum OII docket to be established in connection with the New Regulatory Framework (D.89-10-031, mimeo. pp. 331-337). Pacific Bell should serve these quarterly compliance filings on all parties to Application (A.) 85-01-034 and all former CMOC members.

Second, since CMOC's term has expired, we delegate the responsibility of monitoring these quarterly reports to CACD, although we encourage CACD to consult with any interested former CMOC members in carrying out this monitoring role.

Finally, we adopt as consistent with D.86-08-026 and subsequent related orders, the recommendation contained in CMOC's

April 26, 1989 report, that Pacific Bell not be allowed to recover from ratepayers the expenses associated with the external audit and/or any related remedial action. We have consistently required Pacific Bell's shareholders to bear the remedial costs of the marketing abuse episode, rather than ratepayers who did not cause such costs, and we view the external safeguard audit as another of these remedial expenses (see, e.g., D.86-08-026, mimeo., pp. 19-20; D.87-12-067, mimeo. p. 80; D.89-06-054, mimeo. pp. 3-4).

We turn now to the issue of CMOC's recommendation that the cease and desist order be lifted. Since the prohibition against cold-selling telemarketing and sales quota program activities was only one component of the entire cease and desist order, which addressed numerous activities found to be in violation of PU Code § 532, Tariff Rules 6 and 12, and GO 153, we confine the impacts of this decision to that narrow prohibition. In all other respects the cease and desist prohibitions specified in D.86-05-072 remains in full force and effect.

With that caveat, we believe, based on the FRC Benchmark Study, that the implementation of the external safeguards audit provides sufficient monitoring protections to justify allowing Pacific Bell to begin undertaking telemarketing activities again. Therefore we will lift that portion of the cease and desist order (D.86-05-072, Ordering Paragraph 2).

FRC has suggested that once the cease and desist order is lifted, it will be necessary to obtain a separate benchmark to determine "Norms" for "cold calls," since customers' attitudes towards "cold calls" and "customer-initiated calls" may differ. FRC suggests that such benchmarks should be established over a period of several months, considering different markets and approaches. (CMOC's June 30, 1989 report, p. 8.)

We adopt FRC's suggestion; however, the task of obtaining separate benchmarks should not delay the submission of the first quarterly compliance filing, even if timely submission means that

the report must be filed before these separate benchmarks have been obtained.

Findings of Fact

1. The CMOC, composed of representatives of consumer groups, Commission staff, Pacific Bell, and the telecommunications industry, was established by the Commission in D.87-12-067, with the overall mandate to ensure that Pacific Bell's marketing practices, for both business and residential sectors, were brought into conformance with the statutes, orders, and other appropriate tariffs on file with the Commission, and that necessary safeguards were put in place for the future (D.86-05-072, mimeo. p. 16.). CMOC was also given specific responsibilities as detailed in D.87-12-067, mimeo. p. 91.

2. Pursuant to D.87-12-067 CMOC's term expired on May 30, 1989, and CMOC presented its third and final report to the Commission on June 30, 1989.

3. A key responsibility delegated to CMOC by the Commission was the review of Pacific Bell's administration of ULTS to ensure conformity with GO 153.

4. CMOC's final report recommends specific modifications to GO 153 which track Pacific Bell's interim guidelines and significantly broaden the definition of "Total Household Income." CMOC also recommends modifications to GO 153 and Pacific Bell's Tariff A5 which would delete existing definitions of "household" and establish new definitions for "subscriber" and "household member" keyed to the concept of tax return dependent status.

5. CMOC requests that these proposals be considered in the Commission's ongoing Lifeline investigation (I.83-11-005), which is appropriate since the proposals are broad-ranging and impact parties who are actively involved in that proceeding.

6. In May 1988, Pacific Bell submitted a report to CMOC detailing those internal safeguards it had adopted following issuance of the Commission's cease and desist order. Thereafter,

Pacific Bell retained the Center which recommended, after some study, that Pacific Bell adopt several interrelated internal safeguards. Pacific Bell responded to the Center's recommendation in its 1989 Business Plan, establishing an Advisory Council on Ethics, an Ombudsman, an expanded training program on ethics, participate management programs, and a new sales quota policy.

7. CMOC reports that Pacific Bell has implemented additional internal safeguards, including itemized billing, confirmation letters, memoranda of agreement with certain unions, and quality control checks.

8. CMOC's June 30, 1989 report provide insufficient detail about these internal safeguards, and their interrelationships, to permit us to endorse them; however, on the basis of the detail provided, CMOC reports to us that Pacific Bell is in compliance with the statutes, general order, and tariff provisions which were the subject of the cease and desist order.

9. The lack of specificity noted above in connection with internal safeguards provides additional impetus for our decision to endorse CMOC's recommendation that a five-year external safeguards audit be conducted.

10. This study is made up of benchmark measurements and quarterly compliance reports, whose purpose is to determine if customers with recent order activity (a) are aware of services ordered; (b) ordered services because of sales pressure; and (c) were offered Lifeline service.

11. The external audit is a significant safeguard because it will facilitate the careful tracking of changes in key marketing abuse measurements by surveying those categories of customers most impacted by past abuses about the change order activities involving services identified in the Commission's cease and desist and follow-up orders.

12. In addition, monitoring of the quarterly reports by CACD will allow the Commission to intervene to take remedial action, if necessary.

Conclusions of Law

1. We do not address the question whether Pacific Bell's interim guidelines comport with GO 153 or Tariff A5, because to do so would be tantamount to rendering an advisory opinion without the pertinent facts before us.

2. We refrain from addressing the merits of the CMOC's proposed Lifeline-related changes in order to provide those parties most impacted by the proposal, notice and opportunity to be heard in I.83-11-005, our ongoing Lifeline investigation.

3. CMOC's recommended five-year external safeguards audit should be adopted, consistent with the preceding discussion.

4. Based on the benchmark measurements submitted to the Commission, that portion of the cease and desist order embodied in Ordering Paragraph 2 (D.86-05-072) should be lifted.

5. Consistent with prior orders, Pacific Bell should not recover from ratepayers the expenses associated with the external audit and/or any related remedial action.

O R D E R

IT IS ORDERED that:

1. The Executive Director shall serve this opinion, including the recommended Universal Lifeline Telephone Service-related revisions found in Appendix B, on the parties to I.83-11-005, so that those most impacted by the proposed revisions to GO 153 and Pacific Bell's Tariff A5 may actively consider these proposals pursuant to the instructions of the administrative law judge assigned to that investigation.

2. The Customer Marketing Oversight Committee's (CMOC) recommendation that a five-year external safeguards audit be undertaken is adopted, consistent with the preceding discussion, findings of fact, and conclusions of law. The first quarterly compliance report covering the quarter ending March 31, 1990, shall be filed by Pacific Bell on or before May 31, 1990, in the new Forum OII docket established pursuant to D.89-10-031. Pacific Bell

shall append to the May 31, 1990 report the Field Research Corporation (FRC) benchmark measurements delivered to the Commissioners and the ALJ on December 5, 1989. Pacific Bell shall file subsequent quarterly compliance reports within 60 days of the end of the quarterly period covered by the report, and shall serve these filings on all parties to A.85-01-034, except that Pacific Bell may attempt to minimize this service requirement by requesting those parties interested in being served to inform it of that fact, and thereafter restricting service to those parties. Notwithstanding the above, Pacific Bell shall serve these filings on all former CMOC members.

3. The restrictions against cold-selling telemarketing and sales quota programs contained in Ordering Paragraph 2 of D.86-05-072 are hereby lifted. In all other respects, the cease and desist order remains in full force and effect.

4. FRC's suggestion that separate benchmarks be obtained following the lifting of the restriction contained in Ordering Paragraph 2 of D.86-05-072 is adopted, consistent with the preceding discussion.

This order is effective today.

Dated FEB 23 1990, at San Francisco, California.

G. MITCHELL WALK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. O'HANIAN
PATRICIA M. ECKERT
Commissioners

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

APPENDIX A
CMOC MEMBERSHIP

- | | |
|--|--|
| 1. Commission Advisory and Compliance Division (CACD)
California Public Utilities Comm. | Robert Weissman, Chairperson |
| 2. Division Ratepayer Advocates (DRA)
California Public Utilities Comm. | David Shantz
Jack Leutza
Chris Ungson |
| 3. Consumer Affairs Branch
California Public Utilities Comm. | Betty Brandel |
| 4. Public Advisor Staff
California Public Utilities Comm. | Robert Feraru |
| 5. T.U.R.N. | Sylvia Siegel
Mark Barmore |
| 6. Public Advocates | Robert Gnaizda |
| 7. General Residence | Alice Gates |
| 8. Senior Citizens | Debra Lewis
Edith W. Feldman |
| 9. Hispanic Community | Carlos Melendrez
G.I. Forum |
| 10. Black Community | David Glover
OCCUR |
| 11. Asian Community | |
| 12. Small Business | |
| 13. Service Representative, TIU | Alicia Ribeiro |
| 14. Service Representative, CWA | Dee Dee Rodriguez |
| 15. California Telephone Association | Bruce Corner |
| 16. Service Representatives | Shelly Kleinman
Lin Kloppenberg
Charisse Watson |
| 17. General Telephone | Jenny Wong
Bill Mitchell |
| 18. Pacific Bell Management | Mike Miller
Sue Swenson
Dee Henderson
Kate Notman |

(END OF APPENDIX A)

RECOMMENDED VS. EXISTING LANGUAGE

GENERAL ORDER 153

Existing Language

"There is only one ULTS access service servicing that residence"

Proposed Language

There is only one ULTS exchange access line serving the household. See household definition below.

ULTS subscribers and/or their household members are not eligible for another exchange access line in addition to Lifeline.

Definitions:

- "Household" - The members of a residence.

- "Household" - The subscriber and their household members.
- "Subscriber" - An individual who is not claimed as a dependent on another person's tax return. (In cases where no one in the household has filed a tax return, the subscriber is defined as a person who is financially independent.)
- "Household Member" - An individual who is claimed as a dependent on the subscriber's tax return. (In cases where no one in the household has filed a tax return, a household member is defined as a person financially dependent on the subscriber.)

APPENDIX B
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RECOMMENDED VS. EXISTING LANGUAGE

GENERAL ORDER 153 - Continued

<u>Existing Language</u>	<u>Proposed Language</u>
"Residence - The residence (dwelling unit) shall consist of that portion of an individual house or building or one flat or apartment occupied entirely by a single family or individual functioning as one domestic establishment...A room or portion of a residence occupied exclusively by an individual not sharing equally as a member of the domestic establishment may be considered a separate dwelling unit for the application of Universal Lifeline Telephone Service."	(Definition of "Residence" to be deleted).
"Total Household Income - All revenue, from all household members, from whatever source derived, whether taxable or non-taxable, including, but not limited to: wages, salaries, interest, spousal support and child support payments, public assistance payments, social security and pensions, rental income, income from self-employment, and all employment related, non-cash income."	"Total Household Income" - All revenues, received by the subscriber and all household members, from whatever source derived, whether taxable or non-taxable, including, but not limited to: wages, salaries, interest, dividends, child support and spousal support payments, expenses paid by others on behalf of the individual, the fair market value of all employment-related non-cash income, rental income, income from self-employment, other sources of discretionary income, public assistance payments, social security, and pensions.

RECOMMENDED VS. EXISTING LANGUAGE

TARIFF A5

Existing Language

Proposed Language

Definitions:

"Residence - The residence (dwelling unit) shall consist of that portion of an individual house or building or one flat or apartment occupied entirely by a single family or individual functioning as one domestic establishment...A room or portion of a residence occupied exclusively by an individual not sharing equally as a member of the domestic establishment may be considered a separate dwelling unit for the application of Universal Lifeline Telephone Service."

(Definition of "Residence" is deleted).

"There is only one exchange access line serving the residence premises."

There is only one ULTS exchange access line serving the household. See definition of household following.

ULTS subscribers and/or their household members are not eligible for another exchange access line in addition to Lifeline.

N/A

For the purposes of administering ULTS: a "subscriber" is defined as an individual who is not claimed as a dependent by another person on a tax return; a "household member" is defined as an individual who is claimed as a dependent on the subscriber's tax return. (In cases where no one in the household files a tax return, the subscriber is defined as a person who is financially independent and a household member as a person who is financially dependent upon the subscriber.)