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ORIGINAL

Decision 93320 JUL 22 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension and Investigation on the Commission's own motion of Sale of Equipment Tariffs filed under Advice Letter No. 13793 by The Pacific Telephone and Telegraph Company.

(I&S)
Case 10949
(Filed February 18, 1981)

John N. Howarth, Attorney at Law, for The Pacific Telephone and Telegraph Company, respondent.
William Knecht, Attorney at Law, for Telephone Users League, protestant.
Ed Perez, Deputy City Attorney for Burt Pines, City Attorney, Los Angeles, Stanley Sackin and Messrs. Morrison & Foerster, by James Bennett, Attorney at Law, for Telephone Answering Services of California, Inc., interested parties.
Robert Cagen, Attorney at Law, for the Commission staff.

OPINION

The Pacific Telephone and Telegraph Company (Pacific) filed Advice Letter 13793 on January 15, 1981 (with supplements filed on January 21 and February 13, 1981) which showed revisions to tariff schedules to provide for the sale of a new design type telephone designated the Americana Edition Circa 1882 Telephone (Americana). The advice letter also provided for a flexible pricing plan. The advice letter filing was protested by Telephone Users League (TUL) on the grounds that (1) the filing was not appropriate under General Order Series 96, (2) previous new pricing plans had been proposed by application rather than advice letter, (3) the pricing concept proposed was revolutionary, and (4) there was no showing that the sale of equipment by Pacific was legal.

On February 18, 1981 the Commission instituted this investigation into the propriety and reasonableness of the tariffs filed by Pacific under Advice Letter 13793 and suspended the operation of each of the tariff sheets until May 22, 1981. On May 19, 1981 Decision (D.) 93055 was issued which extended the suspension until November 22, 1981.

A prehearing conference was held before Administrative Law Judge (ALJ) Mary Carlos on March 9, 1981 and evidentiary hearings were held on April 2 and 3, 1981. The matter was submitted subject to receipt of concurrent briefs on April 22, 1981 which have been received.

Summary

This decision authorizes Pacific to sell outright the Americana telephone set, including shell and internal components, on a flexible price basis. A minimum/maximum price window was established and provision made for changing the initial offering price on 30 days' written notice to the Commission.

The decision declines to construe the 1956 Consent Decree, by which Pacific is bound, since there is no language in the Consent Decree which specifically prohibits sale of equipment by American Telephone and Telegraph Company (AT&T) or other Bell operating companies and since the United States District Court for the District of New Jersey has retained jurisdiction to construe and carry out the provisions of the Consent Decree.

The decision finds that the Commission has authority to authorize flexible pricing of telephone facilities and requires periodic reporting of revenues and costs to determine that the residual ratepayer is not subsidizing the sale of terminal equipment.

Discussion

Two oral motions were made as preliminary matters, one by TUL and one by Pacific. TUL moved to terminate the investigation and reject the advice letter on the ground that the Commission lacked jurisdiction to set maximum and minimum rates for a telephone company. Both Pacific and the Commission staff (staff) argued that they were unaware of any reason that would preclude the Commission's setting rates on a flexible basis. To provide an opportunity to the parties to research the matter, the motion was taken under submission and briefs on the question were filed.

Pacific moved to limit the scope of the testimony and cross-examination of witnesses to the advice letter and the issues raised in the order of suspension and investigation. Pacific stated that testimony filed with the Commission staff and points raised by TUL at the prehearing conference reflected efforts to expand the hearings in the proceeding into areas beyond the scope of the advice letter. The motion was denied as being unduly restrictive and too speculative of the kinds of questions which might be asked and the participation from other parties which might occur. A motion to strike portions of the staff testimony was made later in the proceeding and will be discussed later in this opinion.

The first issue to be resolved is whether Pacific may sell terminal equipment. TUL asserts that Pacific, as a subsidiary of AT&T and as one of the parties named in Appendix A of the Final Judgment in United States of America v Western Electric Company, Inc., Civil Action No. 17-49 U.S. Dist. Court

for the District of New Jersey (56 Trade Cases 17,134) (hereafter referred to as the Consent Decree) is barred from selling equipment. In order to determine whether the Consent Decree bars the actions for which approval is sought under Advice Letter 13793, TUL asserts that it is necessary to construe the Consent Decree. TUL points out that the only activity (with certain exceptions not relevant to this matter) permitted AT&T and its Appendix A co-defendants is the furnishing of common carrier communications services. The Consent Decree defines "common carrier communications services" to mean communications services and facilities, other than message telegram service, the charges for which are subject to public regulation under the Communications Act of 1934 or any amendment thereof, or which would be subject to such regulation thereunder if such a service or facility were furnished in interstate commerce. The term also includes any communications service or facility, other than message telegram service, the charges for which are or become subject to regulation under existing or future laws of any state, territory, or District of Columbia, but only in the jurisdiction or jurisdictions in which the charges for such service or facility are subject to regulation.

TUL argues that the setting for construing the activities which are permitted AT&T and its Appendix A co-defendants must be the 1956 environment in which the Consent Decree was drawn. At that time TUL asserts that common carrier communications services were furnished primarily through rental of terminal equipment. TUL cites this Commission's declaration:

> "The principle that the telephone company own and maintain the complete communication system, including the telephone sets used by its subscribers if it is to provide dependable, economic service is of long standing. We have supported that principle by our past decisions..."

in Western States Telephone Co. v PT&T (1966) 66 CPUC 601, 695 as indication of our acceptance of the proposition that the only permitted

activity was utility ownership with lease by the customer of terminal equipment.

Pacific responds that while the Consent Decree limits the Bell System telephone companies to the provision of common carrier communications services and facilities, it does not purport to circumscribe the ways in which it provides these services, nor does it define of what these services consist. Pacific goes on to state that new services, facilities, and pricing options offered by it under regulation have always been well within the strictures of the Consent Decree.

Notwithstanding its belief that the sale of terminal equipment under regulation is consistent with the Consent Decree, Pacific asserts that any allegations of violation of the Consent Decree should not be presented to this Commission and the proposed tariffs should not be disapproved by this Commission on that basis. The Consent Decree explicitly provides that the New Jersey District Court has retained continuing jurisdiction to construe and carry out the Consent Decree and that any alleged violation of the Consent Decree should be brought by the United States Department of Justice to the attention of that court rather than this Commission.

TUL argues that we must construe the Consent Decree to determine what Pacific is permitted to do. We disagree. We observe that the language of the Consent Decree is not permissive, it is prohibitory, e.g. Section V which begins:

> "The defendant AT&T is enjoined and restrained from engaging, either directly, or indirectly through its subsidiaries other than Western and Western's subsidiaries, in any business other than the furnishing of common carrier communications services; ..."

We must therefore look to see what Pacific may not do. There is no language in the Consent Decree which prohibits sales of equipment by AT&T or its subsidiary co-defendants. Further, the Consent Decree does not set limits on the ways in which communications services may be provided nor does it define specifically of what these services consist. The Consent Decree does define "common carrier communications services" as:

> "...communications services and facilities, other than message telegram service, the charges for which are subject to public regulation under the Communications

> Act of 1934, or any amendment thereof, or would be subject to such regulation thereunder if such a service or facility were furnished in interstate commerce; and shall also include any communications service or facility, other than message telegram service, the charges for which are or become subject to regulation under existing or future laws of any state..." Consent Decree, Section II (i).

No party has argued that the Americana is not a communication facility. The charges for it are subject to our regulation. Therefore, in the absence of a specific prohibition in the Consent Decree, we will not attempt to construe the Consent Decree to determine what further activities the federal court may have wished to permit or ban. The Consent Decree specifically provides that

> "Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment..." Consent Decree, Section XVII.

This decision not to construe is consistent with our holding in In Re Pacific Tel. & Tel. Co. 55 CPUC 387 where we stated:

> ". . . In any event, it is for the federal courts, and not for this Commission, to implement their decisions; and the Consent Decree seems specifically to assume that such activities as the one here in contemplation can be rendered by applicant without any injurious effect on the public welfare, so long as such activities are regulated by state commissions. . . . If the federal court had wished to bar such activities by the applicant even though subject to regulation, it would have made such provision and the question would not be before this Commission. . . ." (55 CPUC 387 at 399.)

We also note that Pacific furnished an exhibit in this proceeding (Exhibit 8) which shows that 19 Bell Operating Companies have authority to sell the Americana telephone set in 51 out of the 54 jurisdictions in which these companies operate. This particular exhibit went unchallenged and undiscussed by TUL in its arguments asserting that a Bell Telephone operating company bound by the Consent Decree may not sell terminal equipment. These circumstances tend to assure us that we are correct in our decision not to construe the Consent Decree to prohibit sales of terminal equipment as TUL would have us do.

Further, while TUL's citation of Western States Telephone Co. is a correct reflection of the principles generally in effect in 1966, a careful reading of the decision shows no support for the proposition that this Commission regarded the only permitted activity in which Pacific could engage under the Consent Decree was utility ownership of terminal equipment with lease by the customer. The rationale behind the principle at that time was clearly that Pacific could provide dependable, economical service, only through ownership of the complete communications system. Had TUL cited the complete language of the paragraph it quoted in its brief, such rationale would have been obvious. Just as obvious, we think, is the fact that the principle and the underlying rationale went by the boards when we permitted interconnection of customer-owned equipment with the telephone utility system.

We come next to the issue of flexible pricing. TUL argues that even if Pacific may sell terminal equipment, this Commission does not have the authority it would need to approve rates in the format and with the flexibility requested by Pacific. The pricing plan proposed by Pacific consists of a minimum price of $299 and a maximum price of $499. There are also flexible prices for maintenance agreements and fixed prices proposed for the repair and mounting of the Americana set. Prices would be in effect for a minimum period of 30 days and the Commission would be notified 30 days prior to the effective date of a price change.

The basis for TUL's argument that we lack authority to approve such a pricing proposal seems to be that while there is specific authority granted the Commission under Part II of the California Public Utilities (PU) Code to set minimum and maximum rates with varying degrees of flexibility, there is no such specific grant under Part I of the PU Code and in fact the Commission has not, for a utility regulated under Part I, fixed anything but a single rate as just and reasonable.

TUL argues that the Commission's historical practice of not approving any but specific and fixed rates for Part I utilities

(including telephone corporations) should be persuasive but that, in addition, when the Commission saw the need to approve maximum and minimum rates, it asked the Legislature to give it a specific grant of authority to do so. The result is PU Code § 3662 for maximum/minimum rates for Part II entities.

Pacific argues that the Commission has authority under Section 6 (of Article XII) of the California Constitution which states:

> "The Commission may fix rates...for all public utilities subject to its jurisdiction." (Emphasis added.)

It argues further that the language of § 3662 does not preclude the Commission from establishing a flexible pricing plan for telephone equipment since § 3662 is merely intended to give the Commission maximum flexibility for setting highway carrier rates. It notes that even if § 3662 were to be considered specific direction concerning the type of rate methodology to employ, the Legislature frequently directs the Commission to regulate in a specific manner even though the Commission possesses the jurisdiction to act in the same manner or otherwise without legislative mandate. It cites PU Code §§ 453.5 and 2831 as examples.

The staff also argues that TUL's position is without merit and argues that the Commission has power to set rates within a range. Staff points out PU Code § 457 which reads as follows:

> "457. Nothing in this part shall prevent a corporation or person engaged in the production, generation, transmission, or furnishing of heat, light, water, or power, or telegraph or telephone service, from establishing a sliding scale of charges when a schedule showing such scale of charges has been filed with the commission and the schedule and each rate set out therein has been approved by it. Nothing in this part shall prevent any such corporation or person from entering into an agreement for a fixed period for the automatic adjustment of charges for heat, light, water, or power, or telegraph or telephone service, in relation to the dividends to be paid to stockholders of such corporation, or the profit to be realized by such

> person when a schedule showing the scale of charges under such arrangement has been filed with the commission and the schedule and each rate set out therein has been approved by it.
>
> "Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, as authorized by this part."

Staff also points out that TUL is in error in its contention that the Commission has never set flexible rates for a Part I entity, citing Application of Emery Air Freight Corporation, (Emery) Application (A.) 59809, D.92323 dated October 22, 1980. There the Commission concluded that the showing made by the applicant was satisfactory under § 454(b) as justification for the rate window increase sought by Emery.

TUL counters with the argument that staff is incorrect when it asserts that "flexible rates" equal "maximum and minimum rates" equal "sliding scale of charges". Unfortunately TUL presents no analysis or interpretation of its own showing that the terms are necessarily different. It relies instead on the fact § 457 was previously used as authority for heating value rate adjustments and for adjustments tied to the purchased price of fuel as defining and therefore limiting the meaning and application of the statute.

This argument has no merit. The plain language of § 457 gives the Commission authority to set rates for telephone and telegraph companies on a sliding scale basis. We have heard no argument that convinces us that the flexible rates proposed by Pacific do not qualify as "rates based on a sliding scale" and the mere fact that we have not previously authorized such rates for a telephone utility is in no way indicative of lack of authority to do so.

We concur with staff and Pacific that we have the authority to set flexible rates if the showing justifies such rates. Further, we regularly set flexible rates for Part I utilities furnishing gas service to reflect changes in the cost of fuel oil. As early as 1918 we said:

> "...we deem it desirable to fix a rate that will be flexible in so far as it is affected by changes in the price of oil, and which will thereby render unnecessary repeated proceedings for adjustments in the rate. . . ." (A.3300, D.5440 (15 CRC 776).)

This use of a fuel oil adjustment provision was again before the Commission in 1936 in Cases (C.) 4138, 4149, 4150 and 4151 where we recognized in D.29287 that:

> "To a large extent and certainly as to the lower bracket schedules surplus industrial gas rates have developed under competitive conditions. The lower bracket rates are very clearly competition-forced rates."

> "A properly constructed fuel oil clause whereby rates automatically go up or down with the price of fuel oil is, under the circumstances here shown, justifiable."

Having disposed of the threshold issues in this proceeding we come, at last, to Pacific's showing in support of its request to sell the Americana on a flexible price basis. The Americana is a limited edition telephone set - only 100,000 sets will be manufactured, of which 8,600 are allotted to Pacific for its California market. Pacific has testified that it does not have to take all 8,600 sets and that it has been informed that if it does not want all of them, there are other Bell operating companies who do.

Pacific proposes to price the Americana at a minimum of $299 and a maximum of $499, with the initial offering being made at $429. It presented evidence of its cost per set, including unit cost, unit operating and nonoperating expenses, fixed operating expenses with gross receipts and license contract factors, of $259. The cost figures assume that all sets will be sold in six months. These costs were supported by staff and were not challenged by any other party, although they were explored on cross-examination for clarification purposes. Based on a minimum price of $299, Pacific shows a contribution to costs (profit) of 15%, on the initial price of $429, a contribution of 66% and on the maximum price of $499, a contribution of 93%.

In addition to the cost of the set, Advice Letter 13793 includes maintenance charges, which are also set on a flexible pricing basis depending on whether the agreement is purchased with the set or at some subsequent date and depending on whether the term of the agreement is for two or four years. Contributions to cost for the maintenance agreements run from a low of 85% for a minimum price for a two-year agreement purchased subsequent to the set, to a high of 534% for the maximum price of a two-year agreement purchased with the set. Pacific testified that its percent contribution to costs figures were essentially numbers that dropped out of the calculation of sale price minus costs divided by costs and that the various levels of prices were not designed to produce a specific level of constribution.

Pacific's proposed tariff also includes fixed repair charges applicable if a maintenance agreement is not purchased and optional mounting charges which are not flexible. These prices are as follows: Repair-Housing $110, Repair-Components $52, and Mounting $45; with percent contributions to costs being 15%, 14%, and 40%, respectively.

Pacific cites four factors in its decision to sell the Americana set:

1. Sale with flexible pricing will allow it to maximize profitability for the Americana and future design line telephones (DLTs) on a more equal footing with Pacific's competitors.
2. The growing consumer reluctance to pay a DLT set monthly rate.
3. The current "hybrid" method of selling the housing but retaining ownership of the internal mechanism of DLTs is confusing to Pacific's customers.
4. DLTs have proven to be popular as gifts, and the split ownership of housing and components has made the giftgiving of DLTs a complex and frustrating experience to the consumer.

Pacific asserts that flexible tariffs will allow it to react quickly to competitive pressures and to test which price within the minimum/maximum range will maximize contribution at any given time.

The Commission staff presented policy recommendations on behalf of the Communications Division by David Shantz. The Shantz report presented specific recommendations on the direct sale of both new and in-place DLTs. It is the Communications Division staff's policy to encourage the direct sale of all new and in-place customer-premises terminal equipment by all communications utilities. Shantz points out that deregulation of terminal equipment as ordered by the Federal Communications Commission, tentatively effective March 1982, necessitates the removal of all customer-premises terminal equipment from the regulated utilities' books of account. By offering new customer-premises terminal equipment on a direct sale basis, the problem of separating the deregulated operations will at least not continue to grow. Further, Shantz believes that the direct sale of customer-premises terminal equipment also eliminates the need for the utility to purchase such equipment using high-cost long-term debt. Lastly, the direct sale of customer-premises terminal equipment allows the utility to react to the demands of the marketplace without incurring the risks such as unanticipated early obsolescence and failure to recover the capital investment associated with the conventional leasing of such equipment.

As summarized above, Shantz' testimony is quite broad, reaching far beyond the limited subject of the advice letter which concerned sale of a single new DLT called the Americana under a flexible pricing plan. A motion was made by Pacific and supported by TUL to strike the testimony concerning sale of all in-place DLTs. The motion was granted by the ALJ and is affirmed here. The considerations inherent in the subject matter are too far-reaching to be disposed of in a limited proceeding such as this one. We agree that the considerations need to be addressed but we believe that the appropriate vehicle for doing so is a statewide investigation with all interested parties on notice that the issues are being considered. OII 81 is such a proceeding. Since sale and costing of all terminal equipment is being considered there in connection with Pacific's general rate case, we will also consider the matter of selling in

place DLTs in OII 81. A second section of Shantz' report was struck on grounds of consistency with the prior ruling. That section concerned the sale of all new DLTs, not just the Americana. The purpose of this investigation was only to consider the sale of the Americana set. Just as Pacific wishes to feel its way in the competitive world with a single offering, so do we wish to observe the operation of the sale and flexible pricing of this one offering before we consider directing that all new DLTs be sold directly under a flexible pricing tariff.

Shantz' report states that the flexible pricing concept as applied to the sale of totally optional equipment such as the Americana, provides Pacific the opportunity to gain experience as a retailer in terminal equipment in a way that is in the best interests of both the ratepayer and the utility. Shantz recommends that Advice Letter 13793 of Pacific be allowed to become effective as soon as possible.

TUL takes the position that if Pacific is allowed to compete in the open marketplace by selling terminal equipment, the Commission must remove, or secure the removal of the protections which Pacific now enjoys as a regulated company. Specifically, TUL believes that the Commission should make any approval of flexible rates conditional upon amendment of Business and Professions Code 17024 which exempts regulated goods and services from challenges for below-cost selling. TUL also believes that the Commission must secure, or require Pacific to secure, revision of all rules, laws, limits, and decisions that limit its liability beyond that which any vendor can negotiate with any customer for any equipment sold by the utility.

TUL did not present witnesses of its own in the proceeding, confining its participation to cross-examination and briefs. It made no showing that the proposed minimum prices for the Americana were less than cost, and in fact, did not seriously attack Pacific's cost figures which show a minimum 15% profit. In view of this, and in view of the reporting requirements which we will establish, we can see little

likelihood that the issue of selling below cost will arise with respect to sales of the Americana. We do recognize the issue as a potential problem for future sales, however, and this is another reason why we hesitate to rush into a blanket approval for Pacific to sell all new DLTs without further scrutiny.

Similarly, TUL's request that all rules, laws, limits, and decisions that limit Pacific's liability must be revised as a condition to allowing Pacific to sell the Americana is far too broad to be considered here where TUL has made no showing or raised serious doubt on cross-examination that any specific potential harms lurk in the Americana. We note that we have approved sale of other Pacific equipment, for example, the RV and boat jack tariff shown in Advice Letter 13640 effective July 30, 1980 and the shells of other DLTs shown in Advice Letter 13618 effective July 16, 1980 without such a condition. Again, in view of the limited scope of this authority, and in the absence of specific allegations of harm, we will not now impose the burdensome requirement on Pacific of securing revision of all rules, laws, limits, and decisions that limit its liability as a precondition of sale.

In declining to do so, it should be clearly understood by all parties that the Commission does not wish, as a matter of policy, to burden the residual ratepayers with costs which may conceivably arise out of liabilities associated with terminal equipment that has been sold by Pacific. We think, in a restricted offering such as this one, that the probability of some unspecified liability arising is remote; however, we do recognize the possibility of it occurring and urge all parties particularly our staff to address this matter in detail in future proceedings involving sale of terminal equipment.

It appears to us, from the evidence and arguments submitted in this proceeding, that there is no legal bar to the sale of the Americana under a flexible tariff and there may be a real benefit to the ratepayers if the expected high level of contribution obtains.

We will, therefore, allow the tariffs contained in the advice letter to become effective.

Both TUL and staff urge that Pacific be required to file a semiannual report tracking recent costs, sales, and revenues associated with the Americana set and that such report be available to the public.

Staff cites the public's fundamental right to scrutinize factors which influence the price they pay for telephones as a strong policy argument for making the tracking and reporting public. It also states that TUL would be able to assist the staff in determining whether the Americana's price continues to be reasonable in view of its cost. Staff points out that the Americana's costs are now public record as a result of evidence introduced at hearing and that allowing public scrutiny of updated costs will put Pacific at little or no additional competitive disadvantage. It also notes that Pacific has made no showing that public knowledge of its costs will put it at a competitive disadvantage, nor even shown that any competitor markets a telephone similar in price or design to the Americana.

Staff recommends that reporting on the Americana should be combined with the semiannual decorator set reports required by D.85287 and the advertising expenses report set forth in Resolution T-9909 dated November 28, 1978.

TUL argues that the profit (contribution) margins are narrow on some of the services, particularly on the low end of the flexible tariff range. It believes that there is no reason why residual ratepayers need take any risk of having to subsidize the experiment in sales that Pacific wishes to undertake. It points out that the cost/price data furnished at the hearing assumes sale of all 8,600 Americana sets within a 6-month period. It argues that simple arithmetic proves that a shortfall in sales wipes out all the contribution shown on Pacific's exhibits.

Pacific believes that it should not be required to report specially on equipment sold under this tariff. It believes that the

detailed tracking and reporting required by D.85287 for other leased DLTs is unnecessary for outright sale items and imposes an additional cost on Pacific which is not borne by its competitors. It states that sufficient information is available through standard accounting procedures and reports (which it is willing to make public) to reflect the overall results of the outright sale program. It contends that where, as here, all the revenues and expenses associated with these competitive products are accounted for separately from any revenues or expenses associated with monopoly services, any tracking and reporting by individual products, including reporting of quarterly advertising expenses required by Resolution T-9909, should no longer be required by the Commission.

Pacific makes a lengthy argument that it should not be required to file semiannual financial reports on DLTs publicly because they clearly constitute trade secret and confidential information. It asserts that Pacific's competitors would be able to track the results of its market studies and devise their marketing strategies accordingly, rendering for naught the efforts of its own marketing department and giving its competitors a continuing competitive advantage.

We think the staff's recommendation to include the Americana costs on the semiannual decorator set report and on the quarterly advertising expenses report too broad. It opens up concerns about reporting of DLT costs generally which simply cloud the issue here. We do agree with staff and TUL, however, that because this is the first offering in outright sale of terminal equipment, Pacific's ratepayers have a right to be certain that they are not subsidizing this experiment. We will require that Pacific file a report, for the Americana set only, showing the same detail as shown on the semiannual financial report for DLTs required by D.85287 and on the quarterly report required by Resolution T-9909 concerning advertising expenses. The report on the Americana should be filed in triplicate with the Director, Communications Division, who will be responsible for seeing that one copy is immediately placed in the formal file available for

public scrutiny. Reports on the Americana set will be due each time Pacific files a notice of price change, or quarterly, whichever period is more frequent. This reporting procedure will enable the staff and the public generally to monitor costs and prices to determine that Pacific's general ratepayers are not subsidizing sale of the Americana.

Findings of Fact

1. Pacific has filed an advice letter with a tariff setting out minimum and maximum prices for the outright sale of the Americana decorator telephone set and for the optional maintenance agreement to be offered either at the time of sale or afterward to purchasers of the Americana.

2. The minimum prices shown in the advice letter provide at least 15% profit to Pacific and the maximum prices provide for substantially higher profit margins.

3. The cost figures provided by Pacific for the Americana assume sale of 8,600 sets within a six-month period.

4. The Americana telephone set is a communication facility, the charges for which are subject to regulation by this Commission.

5. There is no language in the Consent Decree which specifically forbids Pacific, as a subsidiary of AT&T bound by the Consent Decree, to sell terminal equipment.

6. The United States District Court for the District of New Jersey has retained jurisdiction to construe and interpret the Consent Decree.

7. PU Code § 457 provides authority for this Commission to approve a sliding scale of charges for telephone service.

8. No showing has been made that minimum/maximum rates are different than a sliding scale of charges.

9. Periodic reports of sales, costs, and revenues will enable monitoring to ensure that Pacific's residual ratepayers are not subsidizing sales of the Americana.

10. Pacific wishes to begin sale of the Americana sets as soon as possible and requests an early decision in this matter.

Conclusions of Law

1. The rates shown in Pacific's advice letter for minimum and maximum prices for sale of the Americana and the associated optional maintenance agreement are just and reasonable based on the projections of cost and sales furnished at hearing.

2. Absent a specific prohibition set forth in the Consent Decree, this Commission should not construe the Consent Decree to prohibit specific activities.

3. Sale of the Americana will benefit Pacific's ratepayers if a positive contribution to operating costs is achieved and should provide Pacific with an opportunity to test the waters of competition with a limited offering.

4. Pacific should be required to report sales, costs including advertising expenses, and revenues on a periodic basis as set forth in the order below. The reports should address only the Americana sets and should be open to public inspection.

5. To allow Pacific to enter the competitive market for sale of terminal equipment promptly, the effective date of this order should be the date it is signed.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company (Pacific) is authorized to sell outright the decorator telephone set called Americana on a flexible rate basis as set forth more fully in Advice Letter 13793.

2. Pacific is authorized to refile the tariffs submitted with Advice Letter 13793 in an advice letter supplement. Such tariffs shall become effective five days after filing.

3. The suspension of the operation of the tariff sheets until November 22, 1981, as provided in D.93055, is lifted.

4. The initial offering of the Americana shall be made at $429, which price may be changed only on 30 days' notice in writing to the Commission.

5. Pacific shall file reports on the Americana decorator set which contain the same information required for the semiannual report

on leased decorator sets required by D.85287 and the quarterly report on advertising expenses required by Resolution T-9909.

6. The report required in Ordering Paragraph 5 shall be filed in triplicate, Attention: Director, Communications Division, who will be responsible for placing one copy in the formal file. The report shall be due each time Pacific files a notice of price change for the Americana, or quarterly, whichever period is more frequent. The first report is due October 1, 1981 unless Pacific files a price change before that date. Pacific shall also make a copy available to any person requesting a copy.

7. The motion of Telephone Users League to terminate this investigation and reject Advice Letter 13793 is denied.

This order is effective today.

Dated [illegible] 22 [illegible], at San Francisco, California.

President

Commissioners