ALJ/JBW/tcg **Mailed 6/4/98**

Decision 98-06-014 June 4, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

First Financial Network, Complainant, vs. Pacific Bell (U 1001 C), Defendant.	Case 96-11-006 (Filed November 7, 1996)

<u>Jotham S. Stein</u>, Attorney at Law, of the Law Offices of Jotham S. Stein, for First Financial Network, complainant.
<u>Nicola Erbe</u>, Attorney at Law, and Adrian Tyler, for Pacific Bell, defendant.

OPINION

Statement of Facts

First Financial Network (First Financial) is a small mortgage brokerage corporation with its office in Palo Alto, California. Its business is the arrangement of mortgage home loans for individuals who wish to purchase a home or refinance their mortgage. Founded in 1986, it is wholly owned by its president, Omer Ahmad Salem who also operates a business in Egypt which requires his presence frequently.

In 1993, the time of interest here, First Financial at the most employed the services of 20 people, more than half of whom were independent contractors working in the field. Apart from a secretary-receptionist, there were 5 to 6

7369

employee loan processors inside who were supervised part time by Salem's brother, Kevin Salem, and a "free-lance" part time bookkeeper, Richard Goodall (who worked there from the fall of 1991). For the convenience of First Financial, to facilitate the signing of documents which required a corporate officer signature during Salem's frequent absences, Goodall also was the pro forma corporate "secretary" of First Financial from mid-1993. There were no other corporate officers than Salem and Goodall. In addition, to these personnel, there was an independent contractor consultant, Tim Lange, who had been engaged in May of 1993 to develop computer software for the firm's customers to clarify credit information in order to shorten the lead time to process mortgages. His responsibility was to write the software needed and to configure the hardware necessary at each work station for the system to work.

Initially First Financial's telephone needs had been provided by Pacific Bell (Pacific). However, in 1991 First Financial switched to Centex Telemanagement (Centex). In 1993 Centex was serving the mortgage brokerage firm's 12 workstations with 8 incoming lines, a toll free number, and several fax lines.

Within Pacific's organization there is a group called the "Win-back Team" whose purpose is to go out to people or companies who formerly were Pacific customers, and try to get them to return to Pacific service. Korey Cayetano in late 1993 was a "win-back" specialist. Although Pacific's computer record of internal notes Pacific personnel make regarding former customer contacts indicates that Kevin Salem was the person to be contacted at First Financial,[1]

---

[1] A November 1993 Pacific print out of internal notes (Exh. 20) reads in substance: "Steven Doi working on Centrex proposal. Kevin Salem wants Centrex specs. call back, refer to John Peninsula."

Cayetano asked Steven Doi (at that time a Pacific data sales specialist responsible for proactive data and Centrex sales) to accompany her to visit First Financial. She informed Doi they should talk to a "Tim Lange." Upon arrival and while waiting for Lange, in talking to the receptionist they learned that Omer Salem was out of the country, and that on telephone matters Lange was the person who handled that particular matter. On that visit with Lange, Cayetano and Doi sized up the office, tried to determine the growth vs. present business, and sought to see if there was a Pacific Bell product to match. Doi concluded that Lange felt that calls were being missed. Doi concluded that the 8 existing Toshiba System lines were inadequate. Accordingly, Doi came up with a Pacific Centrex system configuring 5 lines to the receptionist; 2 lines each (one to switch to the other if busy) to 25 potential stations, 2 fax lines, and 3 forwards from existing numbers, with another 12 lines in reserve; in all a 55-line configuration.

On December 9, 1993, Doi submitted a statement for Lange to sign stating that installation charges for the proposed Centrex system would be $6,960 and monthly charges $943.50, and stated the system installation would proceed upon receipt of a signed copy of the letter. On December 14, 1993, Lange signed and returned the letter, representing thereon that he was "VP Marketing."[2] Doi accepted that Lange was "Vice President" of First Financial and Pacific proceeded. Curiously, although Pacific's own internal records and notes reflected that Kevin Salem was the contact person (Exhs. 4 and 20) at First

---

[2] During visits to Lange, Doi stated he had seen a computer print out attached to his office door reading "Vice President." According to Goodall, many of the office workers had such print out signs at their work stations, some whimsical, some very grandiose titles, and some inversions of their names. These signs were on doors and desks, including one on the receptionist desk.

Financial, Pacific's personnel never contacted Kevin Salem and Kevin was unaware of any order for Centrex equipment from Pacific being placed or installed until about May of 1994.

Pacific installed the Centrex system in First Financial's telephone closet on February 4, 1994. By early March it appears Lange added second telephone instruments on 6 or 7 of the work stations, instruments connected to the telephone cabinet. By mid-April Lange contacted Pacific to remind that no Centrex training had been provided although there was turnover in the First Financial office facility. Goodall, the part time bookkeeper, asked Lange about the new phone on his desk, and was told that software on their DOS personal computers now provided a personal information system that enabled loan officers talking to a customer to bring up that account on their screen, and do other things. Not involved with these matters, Goodall felt it was not his business. He never presumed to question if Lange actually was an officer, although Goodall was aware that Lange would at times provide the 2nd signature to Goodall's "secretary" signature on routine checks. Kevin Salem, present part time, merely supervised the loan side of the business, although he also regularly talked to his brother Omer when the latter was in Egypt.

Omer Salem returned from Egypt on February 17, 1994 to face a deteriorating business climate and initially was forced to devote his time to developing business for First Financial. While so preoccupied, early in March, with Lange present, Salem met with Doi and a Pacific sales support manager to discuss changes in configuration of the Centrex system to better match First Financial's needs. These changes included a new fax line, and changing the second line at each station to call forward to the receptionist station under a no answer condition. Doi memorialized the meeting in a March 11, 1994 letter to Omer Salem which also contained proposals for additional receptionist station equipment. Omer Salem asserts that, confused by the similarity of the centex-centrex names, he at that time thought that they were merely talking about some enhancements to the existing Centex Telemanagement equipment First Financial had been using. Doi does not think there was any mention of Lange's authority, and recalls no discussion of 55 lines to the First Financial Telephone Closet.

Omer Salem asserts that the he first became cognizant of the extent of Pacific's additions when he was handed a Pacific bill by his bookkeeper in late April or early May.[3] He called Pacific and learned there were more charges, and requested a tally which he received in late May or early June. Earlier, he had picked up the 6 or 7 new instruments,[4] put them in a box, and stored them. Stunned by the magnitude of the Pacific charges in addition to the Centex Telemanagement system charges the company was all along paying,[5] he then investigated. He questioned his brother Kevin and testified that Kevin was unaware of the situation and had not been involved. He then questioned Lange.

---

[3] During the hearing Pacific's attorney attempted "to represent" to her witness that Pacific's first billing to First Financial for the Centrex system went out "approximately February 24 or sometime hereafter," and had not been paid. Complainant's attorney objected strongly to any such representation on the basis that the respective billings had not been produced during discovery although such records had been requested. Pacific conceded that it had not produced the billings for complainant. Goodall could not recall when the initial Pacific bill had been received, only that he had presented it to Salem at the time.

[4] These telephone instruments belonged to First Financial, having apparently been purchased by Lange for use with the new Centrex system as the 2nd phone on a desk.

[5]

Month	Centex Telemanagement	Pacific Centrex
Jan.	$3,468.87	$3,411.15
Feb.	2,913.83	3,855.21
Mar.	1,750.59	1,656.34
April	1,090.62	2,555.17
May	2,625.22	851.62

Footnote continued on next page

Lange acknowledged his actions in ordering the Centrex installation, stating in justification that he anticipated company growth and acted accordingly. He further allegedly stated that he had relied upon a "promotion" of Pacific whereby installation would be free.[4] Thereupon, as of May 24, 1994, Salem summarily terminated independent contractor Lange's services for unacceptable conduct.

Thereafter Omer Salem arranged to meet with Pacific's Doi and sales support manager Donaldson on June 22, 1994. He disputed Pacific's claimed account balance of $18,943. The 55 lines Centrex system being far beyond any anticipable needs, he ordered cancellation; but then agreed to transfer his telephone service from Centex Telemanagement to Pacific, for Pacific to retain 18 Centrex lines, Custom 800 service, and Directory Advertising, all at a monthly cost as follows:

18 lines @ 16.50 each	$297.00
Custom 800 number	15.00
Directory Advertising	139.00
Basic monthly cost:	$451.00

It was Salem's contention the 55-line Centrex System was installed without his authorization, was not needed or used by his company, and that its costs could drive his company out of business. Pointing out that all the while concurrently his company had continued to use and incur costs for Centex, he asked that the

---

[4] A Lange statement completely discredited when considered in context with the order Lange signed on December 14, 1993 for the Centrex system. That Pacific commitment letter was signed by Lange who entered the title "VP Marketing." It listed installation charges of $6,960.00 and monthly charges of $943.50. Salem obtained a copy from Pacific when he asked Pacific for some substantiation of an order being placed for Centrex.

duplicate billing for Pacific's Centrex be canceled, except for the above 18-line configuration which he would pay off at $500 per month (Exh. 8).

Pacific reconfigured the service to 18 lines, but refused to adjust the account, stating that Salem's employee placed the December Centrex order; that Salem had earlier made no effort to restrict order approval of Pacific services to himself; and that the services remained in for more than one billing cycle so that his company had to have been aware of the services (Exh. 9). The account was referred to a Pacific billing manager, and on October 6, 1994 there was another meeting at Pacific's San Jose office. Salem was told that the matter of any adjustment had to be referred to upper management.

First Financial's business significantly declined late in 1994 and in January of 1995, Salem assumed the debts and filed Chapter 13 bankruptcy, Case #95-50334 JRG, by which unsecured creditors were to get 18% paid over a 5-year period. Assertedly, most of his creditors, including the Franchise Tax Board settled, but Pacific refused.

Early in 1995, Salem reactivated First Financial, and paying a deposit obtained Pacific service (415-323-2121) averaging $200 per month charges. In June the Bankruptcy Court dismissed the Chapter 13 plan because of lack of payments. In July Pacific notified Salem it was transferring the prior open balances in the amount of $17,474.79 to First Financial's new account and advised that the account was then due and payable. If not paid, service would be discontinued. Salem again attempted to resolve the matter, this time with Pacific's Customer Relations Team, pointing out the earlier dispute, submitting his tax return, income and expense statement, balance sheet, creditor list, etc.; and offered to pay immediately $3,654 in full settlement (approximately 21% of the $17,474.79) rather than have to again file in bankruptcy, this time in Chapter 11. Pacific responded by writing to offer the balance of $14,474.72 (sic) to be paid off at the rate of $1,456.22 per month commencing January 15, 1996.[7] Default would cause service suspension subject to immediate payment of all past due, a $5,000 security deposit, and a $40 per line restoral charge. Salem responded that he was going to the Public Utilities Commission to complain. A month later Pacific wrote to state there had been a typographical error on the total, which should be $17,472.72.

On November 7, 1996, after an unsuccessful attempt to resolve the issues through the Commission Consumer Affairs Branch, First Financial filed the present complaint, asserting therein that Pacific has acted fraudulently or negligently, in violation of the provisions of Public Utilities (PU) Code § 451 by installing and charging for an extravagantly sized 55-line Centrex system in this very small business facility without appropriate authorization; that complainant should not be responsible for the substantial installation and monthly charges that resulted before discovery by the owner; and that Pacific has refused a settlement based on Chapter 13 bankruptcy terms. First Financial seeks reversal of the assertedly overbilled amount of $17,474.72.

By its answer filed December 18, 1996, Pacific denies installing the Centrex lines without authorization, asserting that Lange, a vice president of complainant, had either actual or apparent authority to order the lines; that complainant enjoyed the use of the installation for four months, incurring toll charges, before disputing the charges six months after placement of the order, and admitting that Pacific has refused complainant's settlement offer of $3,654. Pacific asserts that complainant fails to state a cause of action setting forth facts to

---

[7] Clearly from the context of Pacific's letter, the use of "1996" was in error. The clear indication is that "January 15, 1997" was to be starting date.

form the basis of a violation of any provision of law or order or rule of the Commission, and asks that the complaint be dismissed.

A duly noticed evidentiary hearing on the proceeding was held in San Francisco, California on August 5, 1997 before Administrative Law Judge (ALJ) John B. Weiss. With presentation of oral arguments following the evidentiary hearing, the matter was submitted for decision.

At the hearing complainant submitted its case through two witnesses: Salem, its president, and Goodall, its former part-time bookkeeper and corporate secretary. Pacific presented its case through Doi, presently a technical sales specialist and formerly data sales specialist.

Discussion

The pivotal issues in this proceeding are the extent of authority, if any, possessed by Lange to sign contracts for First Financial; whether or not Pacific should reasonably have relied upon the contractual authority for First Financial that Lange represented himself as having to have placed an order of this magnitude for this small firm without further reference to the owner; and whether or not Pacific abused its statutory obligations pursuant to provisions of PU Code § 451 to furnish such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the convenience of First Financial. In H.V. Welker, Inc. v. P.T.&T. Co. (1969) 69 CPUC 579), we stated:

> "In the complex field of communications, no layman can be expected to understand the innumerable offerings under defendant's filed tariffs. When defendant sends out one of its communications consultants to a customer's place of business for the explicit purpose of discussing telephone service, the consultant should point out all the alternative communications systems available to meet the customer's needs. This is duty owed by defendant to its customers."

We believe that inherent in this duty owed to the customer is the requirement of fair dealing on the part of the utility.

Lange was engaged by First Financial as an independent computer contractor (not as an employee or officer of the firm) with the specific assignment to write a software program for the mortgage brokerage firm to shorten the lead time required to process a mortgage, and to configure the hardware necessary at each work station for the software program Lange was designing. To configure is to ascertain the ultimate form as determined from the arrangement of the parts. To do this configuration involving telephones in the program it certainly is understandable that Lange, a telecommunications layman, might well have had to work designwise with representatives of the telephone company. But the end result of a consultant's work is the presentation of a proposal to the company which engaged his services as an independent contractor. There is no evidence on this record to substantiate a finding that Salem had intentionally conferred upon Lange actual authority to contract for First Financial, and thus bind the company for thousands of dollar in costs. Nor is there evidence that Salem, by lack of ordinary care, allowed Lange to believe he had contractual authority.[8] Unrevealed is who at First Financial made the initial contact to Pacific, as Lange, Kevin Salem, and Pacific's Cayetano were not at the hearing; but Pacific's computer recorded note for November 1993 indicates that it was Kevin Salem who contacted Pacific and asked for Centrex specifications. Why Cayetano told Doi, the only Pacific witness, that they were to see Lange when they called at First Financial, is unknown, but it is not unreasonable to surmise that as Lange

[8] Cal. Civil Code § 2316 provides: "Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary case, allows the agent to believe himself to possess."

was First Financial's consultant expert, Kevin Salem may well have told Cayetano that the latter should discuss potential requirements with Lange. But this possibility does not indicate a finding that by want of ordinary care Salem allowed Lange to believe himself to possess actual authority to do more than recommended possible equipment desirable, much less to take upon himself the responsibility to commit the firm to an investment and cost without further reference to Salem.

Whether by want of ordinary care Salem created or allowed a situation to exist which allowed Pacific to believe Lange possessed authority to act for First Financial is a closer call. Whether an agent has ostensible authority is a question of fact and may be implied from circumstances (Yanchor v Kagan (1971) 22 CA 3d. 544). It seems clear that Salem ran a very loose office, which in view of his numerous trips to Egypt was risky, since outsiders could easily be misled. When Cayetano and Doi visited First Financial (while Salem was abroad) to discuss service, the receptionist confirmed that Lange was the person to see about telephone matters. Lange had a computer print out sign on his shared office door bearing the title "Vice President." Certainly, Kevin Salem, who was frequently present in the office in his capacity of supervising loan processors, could not have failed to notice this. Doi saw it. But the very variety and nature of these print out signs, whimsical, grandiose, etc., alone would serve to give pause to a viewer, and cast doubt as to their credibility. The December 9, 1993 Letter of Intent from Pacific (Exh. 5) stating the installation cost and monthly charges for the system ordered was simply addressed:

"First Financial Network
167 Hamilton Avenue, Suite 300
Palo Alto, CA"

but in the absence of Salem it is understandable that the receptionist (who was also the secretary) would forward it to the individual to whom she previously had referred Cayetano and Doi; and it got to Lange who on December 14, 1993 signed it "Tim Lange" and with no foundation to do so added the title "VP Marketing" before returning it to Doi at Pacific.

And Kevin Salem's role remains hidden. Assertedly trusted by Omer and frequently in overseas telephone communication, Kevin was not an officer of the company; had no disclosed or apparent overall operational authority; and had no check signatory authority. But the Centrex Worksheet prepared internally and used by Pacific after the December Letter of Intent was signed and returned, bore the names of Lange, Kevin, and Maria (the receptionist secretary), while listing Lange as the customer contact and access name. From Goodall's testimony it also appears that Lange exercised more authority than normally vested in a mere contractor. Goodall had a rubber facsimile "Omer Salem" stamp used along with corporate secretary Goodall's signature for checks when Salem was away. This was used by Goodall for significant checks. But Goodall stated that on everyday routine checks, he would take the checks to Lange for the addition of the necessary second signature required on the account. Another indicator of Lange's unusual role was that at the early March 1994 meeting Omer Salem had with Doi and a Pacific sales support manager, Omer Salem kept the visitors waiting, insisting upon Lange's presence even though Lange was about to go out, and before talking to the Pacific people Omer Salem first talked to Lange. What Omer Salem discussed with Lange before seeing the Pacific people was not stated. But it would be reasonable to assume that he wanted to be "updated" before the meeting—especially in view of the fact that he had just returned from Egypt to face a daunting array of problems. While the evidence here does not attain the magnitude present in Oakland Recycling Association, Inc. v. Pacific

Bell (1991) 40 CPUC 2d 48 which Pacific relies upon as indicative of ostensible authority,[9] the Commission concludes that the facts here tend to imply that Omer Salem by want of ordinary care came very close to creating a situation by which third parties could believe Lange held ostensible authority for telephone matters.

While on this record the Commission must conclude that Pacific reasonably relied upon Lange's manifestations of possession of negotiating authority to design a Centrex system for First Financial, we are disturbed by the lack of more than circumstantial testimony to sustain a conclusion that Pacific should have concluded that he could commit for such a large order. Lange, Cayetano, and Kevin Salem could have been percipient witnesses, but were not produced. We find it difficult to accept that Kevin Salem did not participate or was unaware of events leading to negotiation that preceded placement of the order and/or the Centrex installation. Kevin supervised the loan processors for whose benefit the software program and Centrex installation were being made, yet assertedly he knew nothing. Kevin's name appeared on several Pacific records, yet assertedly he did not participate nor was he contacted. Even Goodall, the part-time bookkeeper, was aware and asked questions of Lange. Doi's testimony was weakened by being liberally studded with "probably," "I don't recall," and "normal procedure." This was a Pacific "win-back" operation, and every inclination appears to get the order without too many questions.

PU Code § 451 as relevant here requires that all services provided by a public utility be such as to promote the convenience of its customers. Doi was a Pacific data sales specialist at the times here when the Centrex system was

---

[9] In Oakland Recycling the corporation gave ostensible authority to change telephone service by allowing its agent to use the title General Manager and by placing the telephone in the agent's home. The appearance of authority was strengthened by the fact that the corporation allowed her to install the phone service in her home.

proposed, ordered, and installed. He earned a commission on Centrex sales, provided the installation remained at least three months. At the time of the order First Financial had 12 work stations. Five of these work stations were staffed by full time employee loan processors (one of these doubled as secretary-receptionist), and the remaining stations were used by independent loan officers who principally worked outside full or part time (some of whom checked in the office for a short while daily). In addition to Salem, there were his brother Kevin, Lange, and Goodall, the part-time bookkeeper. Goodall, who kept a list of people currently affiliated with First Financial, testified that there were rarely more than 20 people employed at a time. The company before the Centrex addition used 18 telephone instruments serviced by 8 incoming lines, a toll free number, and 2 fax lines. The office space approximated 2100 sq. ft.[10] Goodall testified that if 20 persons were present it was crowded, necessitating sharing of desks.

Doi does not recall asking Lange about the office size. His testimony was that the system was designed with Lange's information, and anticipated 25 loan people with 2 lines each, plus 5 lines to the receptionist. When asked by the ALJ whether it appeared that there was room for 25 people, Doi thought it reasonable, and accordingly proposed the 55 lines which in due course were installed and connected to the telephone closet by February 4, 1994.

But how reasonable was Doi's proposal and Pacific's installation? There was no graduated phase in. Was it realistic to anticipate a small company in the mortgage loan business to more than double its work stations immediately? Where were all the additional personnel to work? With 25 persons, plus Salem, his brother, and the bookkeeper, 28 in all, the individual space allocation alone

---

[10] Goodall estimated the space as being approximately 3 to 4 times the 20 x 30 ft. hearing room size.

would be a scant 75 square feet. While Pacific's "win-back" team wanted to get First Financial back in their fold, it would seem that common sense would question the size of the expansion—from 8 lines to 55, as well as the space available--and that before proceeding Doi would want at least to touch base with the owner of this small business, or in his absence get some affirmation from the owner's brother whose name was in Pacific's records as the initiator of the inquiry. A commitment of almost $7000 for installation plus almost a thousand dollars monthly in basic charges alone for such a small company seemingly should have caused some hesitation and reflection on the part of the order taker, notwithstanding the lure of the higher commission the larger the order.

Following Salem's return and discovery of the situation, three months later he ordered the installation cut back from 55 to 18 lines, cutting monthly basic costs from $943 to $297, aside from associated equipment. This change certainly reflects the absurdity of the 55-line installation for this volatile small business that a mere 11 months later was in bankruptcy. It is our conclusion that Pacific overstepped in overloading this small business with an installation of a size that it never needed and could not afford, and that within a reasonable period after discovery of the questionable installation, the owner of the business took appropriate steps to seek adjustment. By June, after discussion with various Pacific personnel Salem agreed not to completely cancel Centrex, but to retain the system reduced to 18 lines (8 lines in hunt, 2 fax lines, and 4 one-modem lines). The Centrex system was then reduced to that level, but by then Pacific was demanding an account balance of approximately $18,000. But as seen, even that reduced level of Centrex service proved to be beyond First Financial's needs.

Pacific's "Win-back Team" personnel are not mere order takers. They are communication specialists whose job should be to consult with the customer, providing information, advice and recommendations leading to an installation that will provide not only appropriate equipment designed to promote the convenience and interests of the customer, but also affordable service. For smaller customers, less well versed in the complex field of telecommunications, this infers fair dealing.

It is the Commission's conclusion that Pacific's February 1994 installation should not have exceeded the 18-line scope, and that had Pacific's "win-back" team been influenced less by the lure of high commissions than by its basic obligation to provide just and reasonable service assistance, an 18-line installation would have been appropriate.

Reviewing the evidence that was provided with respect to the now asserted $17,474.72 balance, we have determined upon the following resolution based upon our conclusion that First Financial equitably should have to pay (1) the tariffed installation costs for an 18-line Centrex installation, (2) monthly tariff charges for the months of March, April, and May for the 18-line Centrex system, and (3) the usage charges incurred for the months of March, April, and May of the 55-line Centrex system.

We conclude that as the Centrex system was not installed until February 4, 1994, the entries for January and February in the statement finally provided Salem, and as set forth in Exh. 6 in the respective amounts of $3,411.65 and $3,855.21, must have been applicable to the installation cost of the 55-line system.

To determine what portion of the monthly bills for March, April, and May are attributable to First Financial's usage of the Centrex installation those months (use conceded by Salem) we reduced each of these billing amounts (as set forth in Exh. 6) by $943.50, the basic monthly charge quoted in Doi's December 9, 1993 letter (Exh. 5).

Our conclusion is that First Financial's obligation shall be $4,697.72, rather than the $17,474.72 balance claimed by Pacific,[11] and that further service shall not be denied First Financial, Salem, or their successors on the basis of the Pacific claim adjudicated here, provided that within 60 days of the effective date of the order that follows, Salem enters into an agreement with Pacific wherein he agrees to pay this $4,697.72 in approximately equal installments over the following 12 month period, without interest. Default on the agreement shall leave the balance

---

[11] Installation-Centrex

	per line	18 lines
Tariff Schedule PUC No. A9.1.1, sh 52.5		
Installation	$25.00	$450.00
Serv. Est.	20.00	360.00
Tariff Schedule PUC No. A9.1.1, sh 53		
Access	45.00	810.00
Totals:	$90.00	$1,620.00

Monthly Charge-Centrex

Tariff Schedule PUC No. A9.1.1, sh 52.2	$ 2.69	$ 48.42
Tariff Schedule PUC No. A9.1.1, sh 53	8.35	150.30
EUCL	4.61	82.98
Totals:	15.65	281.70

Monthly Usage Charges

	Billed	Basic Charge	Usage
March '94	$1,656.34	943.50	712.84
April '94	2,555.17	943.50	1,611.67
May '94	851.62	943.50	(91.88)
Total			2,232.63

Summary

Installation 18 Lines	1,620.00
Monthly Basic Charge 3 x 281.70	845.10
Monthly Usage Charge	2,232.62
First Financial Obligation:	$4,697.72

open to Pacific's normal procedures. The balance of the asserted 17,474.72 is cancelled.

Findings of Fact

1. Pacific is a telephone public utility within the jurisdiction of this Commission.

2. First Financial, a small mortgage brokerage business wholly owned by Omer Salem, formerly was a Pacific customer, but in 1993 was receiving service through another telephone management company.

3. Omer Salem frequently had to be abroad in Egypt on other than his First Financial operation; during these absences his brother Kevin Salem who supervised only the operational loan processing aspects on a part-time basis, was frequently in telephone contact with Omer Salem.

4. First Financial had approximately 20 persons affiliated with the operation of which 6 or 7 were employees working full time inside and the rest independent contractor loan officers primarily working outside. The company had 12 work stations.

5. Omer Salem engaged the services of Lange, an independent contractor, to develop a computer program to expedite loan processing.

6. Pacific records indicate that in November 1993 Kevin Salem placed a request for Centrex specification information from Pacific.

7. Pacific has a "win-back" team who receive a commission for each former customer induced to return; the team members receiving a commission based on the size of the order obtained.

8. For reasons not obtainable from witnesses at the complaint hearing August 5, 1997, the "win-back" team on its visit to First Financial while Omer Salem was in Egypt did not go through Kevin but sought Lange as its contact to

discuss a Centrex system for First Financial, and was referred to Lange by the receptionist as the person to discuss telephones.

9. First Financial personnel indulged in the practice of placing computer print out paper signs on their doors or desks to identify themselves, appropriating titles, some whimsical, other grandiose; Lange had a sign "Vice President" on the door of the office he shared. But their very nature and content would serve to question their authenticity.

10. After discussions with Lange, Pacific's Doi prepared a proposed installation, sending First Financial a commitment letter for authorization; the letter was given by the secretary/receptionist to Lange who signed it, appropriating and entering thereon the title of "VP Marketing" and thereby committed First Financial to a $6,960 installation fee and monthly charges of $943.50 for a Centrex system far in any reasonable requirement of the small firm.

11. At the time of the Pacific visit First Financial had 8 incoming telephone lines; the Centrex operation committed to by Lange and installed February 4, 1994 provided 55 lines.

12. Omer Salem returned late in February, and initially had to address a depressed business situation, but subsequently became aware of the Centrex addition, fired Lange, and after meeting with Pacific personnel, agreed to keep 18 lines but canceled the rest of the 55 lines Lange had ordered.

13. By June of 1994, Pacific's charges for the installation, monthly charges and usage were approximately $18,000 which Salem refused to pay, asserting the installation was unauthorized, unnecessary, and grossly excessive.

14. By January of 1995, Salem filed a Chapter 13 Bankruptcy and offered settlement of $3,654 which Pacific rejected.

15. When Omer Salem reopened the business in 1996, Pacific transferred an asserted balance of $17,474.79 to the new account and threatened disconnection unless paid.

16. Omer Salem on November 7, 1996, after unsuccessful discussions with Pacific, filed the present complaint.

17. At the hearing August 5, 1997, both parties failed to provide all percipient personnel, and Pacific had not provided relevant material with regard to its billing sought by complainant's attorney in discovery.

18. On marginal evidence, it appears that by want of ordinary care, Omer Salem created a situation by which third parties could believe that Lange held some, albeit undefined, ostensible authority from First Financial with regard to telephone matters.

19. On the record the Commission must conclude that Pacific reasonably relied upon Lange's manifestations of possession of negotiating authority to design a Centrex system for First Financial, and the facts tend to imply that Pacific could believe Lange held ostensible authority to commit for an installation, at least one commensurate in size with the system it was replacing.

20. Pacific's personnel overreached in designing, proposing, contracting, and installing a Centrex system that extravagantly went far beyond the rational requirements or capabilities of a very small company.

21. The Centrex 18-line system Salem agreed to retain appears to have been the appropriate system that reasonably should have been proposed by Pacific's "win-back" team to First Financial.

Conclusions of Law

1. Pacific's "win-back" team personnel in their proposal and provision of far excessive equipment and services abused the utility's statutory obligations under

PU Code § 451 to promote the convenience of First Financial, and failed to meet the requirement of fair dealing.

2. First Financial should be required to pay only for what should have been justly and reasonably proposed and furnished First Financial to meet its needs.

3. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in Public Utilities Code § 1757.1.

ORDER

IT IS ORDERED that:

1. First Financial Network (First Financial) shall be responsible for payment to Pacific Bell (Pacific) of $4,692.72 (as computed in footnote 11 in the foregoing Opinion) as full payment in settlement of Pacific's $17,474.72 balance claimed with regard to the 55-line Centrex system installed February 4, 1994; the balance of Pacific's claimed balance is denied.

2. Further telephone service from Pacific to First Financial or its successors shall not be denied, or security deposits be required, where based on a nonpayment of the $4,692.72 balance, provided that within 60 days of the effective date of this order, First Financial or its successor enters into an agreement with Pacific wherein it is agreed that the $4,697.72 will be paid in approximately equal installation over the following 12-month period without interest.

3. Default on payments shall result in the suspension of telephone service until all past due payments are paid, and may result in requirement of a security deposit and per line restoral charge.

4. The Commission has no jurisdiction to order Pacific to pay First Financial's attorneys fee and costs related to this proceeding.

5. Since all outstanding issues in this proceeding have been resolved, Case 96-11-006 is closed.

This order is effective today.

Dated June 4, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners