ALJ/KLM/wav/jva *

Mailed 9/18/98

Decision 98-09-071 September 17, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell for Authority to Increase and Restructure Certain Rates of its Integrated Services Digital Network Services.	Application 95-12-043 (Filed December 5, 1995)
Compaq Computer Corporation and Intel Corporation, Complainants, vs. Pacific Bell (U 1001 C), Defendant.	Case 96-02-002 (Filed February 1, 1996)

O P I N I O N

Summary

This order finds that Pacific Bell (Pacific) failed to comply with Ordering Paragraph 4 of Decision (D.) 97-03-021 and continued to provide inadequate Integrated Services Digital Network (ISDN) service during most of 1997. We fine Pacific $309,000 pursuant to Public Utilities (PU) Code Section 2107 for its failure to comply with D.97-03-021. We also find that Pacific shall, in certain cases, waive installation fees for ISDN service if during any three consecutive months its customer service falls below certain minimum levels.

Procedural Background

Pacific filed this application in December 1995 seeking increases in its rates for ISDN services. Shortly thereafter, in February 1996 Compaq Computer Corporation (Compaq) and Intel Corporation (Intel) filed the consolidated complaint against Pacific alleging that Pacific was not providing adequate ISDN service. Following hearings, the Commission issued D.97-03-021. The order granted Pacific some rate relief for ISDN services and found that Pacific did not provide adequate ISDN service. In an effort to motivate Pacific to provide better ISDN service, D.97-03-021 required Pacific to submit customer satisfaction survey results to the Commission every six months and to offer ISDN customers certain billing credits for failure to meet certain service standards in individual cases.

On November 27, 1997, Utility Consumers Action Network (UCAN) filed a motion in this proceeding seeking sanctions against Pacific for alleged violations of D.97-03-021. UCAN claimed that Pacific had failed to comply with Ordering Paragraph 4 of D.97-03-021 in its failure to file certain information with the Commission by September 1. The motion also alleged that Pacific's customer survey information suggests a deterioration of service in contravention of the letter and intent of D.97-03-021.

By ruling dated December 5, 1997, the assigned Commissioner and assigned Administrative Law Judge (ALJ) responded to UCAN's motion in part by requiring Pacific to submit to the Commission the information required by Ordering Paragraph 4 of D.97-03-021 and testimony addressing a variety of topics related to service quality. The Commission held two days of evidentiary hearings on February 3 and 4, 1998. Pacific presented five witnesses at the hearing. California ISDN Users Group (CIUG) also presented a witness.

The active parties filed opening briefs on March 6, 1998, and closing briefs on March 13, at which time the matter was submitted.

Requirements of D.97-03-021

Ordering Paragraph 4 of Pacific by D.97-03-021 ordered Pacific to "conduct (a) customer survey "and "submit its first survey results no later than September 1, 1997 and submit subsequent survey results every six months until September 1, 1999." Pursuant to Conclusion of Law 8, the customer survey must identify "business and residential customers separately" and elicit "information regarding customers' perceptions on the quality of repair services, how well customer service representatives are trained, how easily customers gain access to employees who are able to help them, and installation services " D.97-03-021 also stated the Commission's intent to "consider whether to take further steps" with regard to ISDN service quality if more than 10% of customers surveyed "characterize any aspect of ISDN service as "inadequate" or "poor."

In response to UCAN's motion and an independent review by the Commission's Telecommunications Division staff, the assigned Commissioner and assigned ALJ issued a ruling to initiate a review of Pacific's compliance with D.97-03-021. The December 5, 1997 ruling directed Pacific to submit testimony on several topics following a Commission staff review of relevant documents:

"1. Pacific shall explain its reasons for failing to submit the information required by Ordering Paragraph 4 of D.97-03-021 in a timely fashion;

"2. Pacific shall explain the reasons for its failure to improve ISDN service since the issuance of D.97-03-021;

"3. Pacific shall describe the steps it has taken to change its ISDN operations and service quality since the issuance of D.97-03-021; and

"4. Pacific shall comment on the following courses of action available to the Commission to enforce its order and assure improvements to ISDN services:

"a. A refund to ISDN customers of the revenues Pacific has collected since May 1997 from the rate increase authorized in D.97-03-021;

"b. A suspension of the ISDN rate increases authorized by D.97-03-021 until such time Pacific is able to present

documentation that it has satisfied the service quality requirements of D.97-03-021 for a period of six consecutive months;

"c. A requirement that Pacific file monthly customer survey results relating to the ISDN repair and installation service performance, stated separately for residence and business customers;

"d. Penalties for Pacific's failure to comply with D.97-03-021 in amounts permitted pursuant to Sections 2107 and 2108 of the Public Utilities Code."

This order addresses whether and the extent to which Pacific violated D.97-03-021, and whether its ISDN services are adequate, consistent with the scope of this portion of the proceeding set forth in the December 5 ruling.

Pacific's Testimony

Pacific's testimony addressed several issues relevant to the inquiry initiated by the December 5 ruling.

Pacific's witness Peter Cartwright described the Telsam surveys (which is how Pacific identifies its customer survey) and the relevance of the Telsam data to ISDN service quality. On the basis of that data, Cartwright concludes that Pacific's ISDN service quality is improving. He refers specifically to improvements made between September 1997 and December 1997, especially for business customers.

Pacific's witness Chris Kren described steps Pacific has taken to improve the quality of ISDN service. Kren states improvements have been made by (1) asking the Engineering Department to provide loop pairs where loop plant is not readily available to provide new service; (2) dedicating ISDN work groups who specialize in ISDN service; (3) reducing the need for mid-span repeaters to minimize the time required to provide new service; (4) increasing ISDN employees from 229 to 311 between January 1997 and November 1997; (5) creating a technical support group to help customers with problems in their

own terminals. Kren testified that the average repair interval for ISDN is 14 hours.

Pacific's witness Jim Fobroy testified as to the reason Pacific's first Telsam report to the Commission was incomplete. In this regard, he stated he submitted survey data for high-end business customers only, rather than all business customers and residential customers. The report also failed to provide data on installation and repair quality. These omissions occurred due to a "misunderstanding" according to Fobroy.

Pacific's witness Don Roe testified that Pacific's ISDN service had significantly improved. As evidence for his conclusions, he observed that Pacific had experienced a 36.8% increase in residential ISDN customers and a 30% increase in business and Centrex ISDN customers between February 1997 and November 1997. Roe recommends against any sanctions. He believes that a rate reduction would dampen competition and that Pacific already has strong incentives to provide high quality service as a result of the billing credits imposed by D.97-03-021 in cases where Pacific does not meet certain service standards.

Pacific's witness Kirsten Anthony explained that the Telsam report for residential customers presented to the Commission in November (and which was due on September 1) was incomplete due to a "misunderstanding."

CIUG Testimony

CIUG witness, Robert Larribeau, testified that Pacific's Telsam data shows that Pacific's ISDN service quality deteriorated during 1997. CIUG stated that it had received many telephone calls and electronic messages from ISDN users complaining about their ISDN service. CIUG recommends Pacific be required to report the results of its Telsam surveys monthly until its "poor" and "terrible" ratings drop below 10% for six consecutive months. CIUG would increase the

operational data Pacific must provide in the monthly reports, to include such information as the percentage of ISDN lines installed successfully on the first visit to the customer premises, the number of penalties paid in each service category and the number of ISDN repair calls. CIUG also recommends Pacific be required to refund the installation charge and three months usage charge when an ISDN installation was not completed successfully on the first visit.

Did Pacific Explain Its Reasons for Failing to Submit the Information Required by Ordering Paragraph 4 of D.97-03-021 in a Timely Fashion?

The December 5 ruling states:

"Pacific shall explain its reasons for failing to submit the information required by Ordering Paragraph 4 of D.97-03-021 in a timely fashion."

Pacific failed to comply with Ordering Paragraph 4 of D.97-03-021 because it did not provide customer survey results the Ordering Paragraph required on September 1, 1997, the date specified by the Ordering Paragraph. Instead, Pacific filed a report on September 5, 1997 that excluded results for residential customers and most business customers. The September 5 report showed results that are substantially better for the months reported than the results Pacific ultimately verified here as accurate. On November 26, 1997, following the filing of a motion by UCAN alleging a violation of Ordering Paragraph 4, Pacific filed a second report which included information for residential and all business customers, but the information it provided for residential customers was incorrect, reporting results that are worse for one element of the survey than those Pacific ultimately verified here as accurate. On December 12, 1997, following the issuance of the assigned Commissioner's ruling addressing Pacific's failure to comply with D.97-03-021, Pacific filed the information required by Ordering Paragraph 4. Pacific was out of compliance with D.97-03-021 for more than three months.

The testimony in this proceeding does not explain the reasons for Pacific's delay in presenting the information required by D.97-03-021. Witnesses Fobroy and Anthony, employees who compiled the information, testified only that they were aware of a "misunderstanding." Neither knew the nature of the misunderstanding. Neither could identify who was accountable for failure to comply with the Commission's order. Neither had seen the relevant portions of the decision which related to the information they were directed to compile. Apparently, no one in the company assumed responsibility for assuring the accuracy of the information required by the Commission order. Pacific did not otherwise justify the reasons for its failure to submit required reports in a timely manner. It does not dispute the allegation that it violated Ordering Paragraph 4 of D.97-03-021.

The December 5 ruling directed Pacific to submit testimony to "explain its reasons for failing to submit the information required by Ordering Paragraph 4 of D.97-03-021 in a timely fashion." Pacific's failure to present a witness who could provide such information is a violation of the assigned Commissioner's ruling.

Has ISDN Service Been Adequate Since the Issuance of D.97-03-021?

The December 5 ruling states:

> "Pacific shall explain the reasons for its failure to improve ISDN service since the issuance of D.97-03-021."

Pacific presented testimony which shows the results of its customer surveys. These surveys are a reasonable proxy for service quality measurements. Pacific's witnesses believe ISDN service has improved substantially, although Pacific believes there is room for additional improvement.

CIUG and UCAN argue that Pacific's ISDN service is poor and that Pacific has failed to improve ISDN service to levels anticipated by the Commission's

order. CIUG suggests that the disconnection of 30,000 ISDN customers in 1997 (about half of the total annual installations in 1996 and 1997) is yet another indicator that customers are unhappy with ISDN service, especially since competitive services and products have not yet been widely marketed. UCAN observes that any notable improvements in service are for only the two most recent months and may not be permanent.

D.97-03-021 stated our intent to reconsider ISDN service if Pacific's customer satisfaction surveys demonstrated that more than 10% of Pacific's ISDN customers rated ISDN service as either "poor" or "terrible." Table 1 attached to this order provides the results of Pacific's ISDN customer surveys for 1997. It shows that Pacific's ISDN service has been consistently poor for most of 1997. Residential customers were particularly dissatisfied with Pacific's ISDN service. As many as 58% rated the service "poor" or "terrible" in July 1997. More than 10% of business and residential customers rated ISDN service quality "poor" or "terrible" in response to 47 of the 48 survey questions posed during each of the 12 months of 1997. In most months, more than 20% rated Pacific's ISDN service quality "poor" or "terrible." The results improve in November and December 1997. Pacific does not explain either the poor service quality or the improvements at the end of the year.

Has Pacific Taken Adequate Steps to Improve ISDN Service Since the Issuance of D.97-03-021?

The December 5 ruling states:

> "Pacific shall describe the steps it has taken to change its ISDN operations and service quality since the issuance of D.97-03-021."

Pacific described several steps it has taken to improve ISDN service since the issuance of D.97-03-021. UCAN argues Pacific's witness did not describe how these changed practices would improve customer service and satisfaction. We

make no findings here with regard to the efficacy of Pacific's operational practices. If the recent increase in customer satisfaction with ISDN service continues, however, we might infer that the operational changes are having the intended effect.

Should the Commission Impose Sanctions on Pacific?

The December 5 ruling states:

"Pacific shall comment on the following courses of action available to the Commission to enforce its order and assure improvements to ISDN services:

"a. A refund to ISDN customers of the revenues Pacific has collected since May 1997 from the rate increase authorized in D.97-03-021;

"b. A suspension of the ISDN rate increases authorized by D.97-03-021 until such time Pacific is able to present documentation that it has satisfied the service quality requirements of D.97-03-021 for a period of six consecutive months;

"c. A requirement that Pacific file monthly customer survey results relating to the ISDN repair and installation service performance, stated separately for residence and business customers;

"d. Penalties for Pacific's failure to comply with D.97-03-021 in amounts permitted pursuant to Sections 2107 and 2108 of the Public Utilities Code."

UCAN and CIUG recommend the Commission take various actions to assure improvements to ISDN service, among them, suspension of the ISDN rate increase, increased reporting requirements, refunds of the increases granted in D.97-03-021, and the performance of an independent audit of each ISDN customer survey report submitted to the Commission.

Pacific believes it would be "unfair" and "counterproductive" to assess any penalties. It argues that reducing ISDN rates would unfairly require Pacific to offer ISDN services below their cost. We reject this argument on the basis that it

assumes incorrectly that the Commission imposes penalties, in whatever form, only when the utility would not lose money as a result.

Pacific also comments that below-cost pricing will dampen the development of competitive products. This altruistic effort by Pacific to protect competitive markets by avoiding Commission sanctions is without merit. D.97-03-021 found that ISDN services are not subject to competition from comparable products in any markets except those serving the largest users. Pacific did not demonstrate otherwise in this proceeding. That Pacific is able to retain its ISDN customer base in spite of such poor service quality suggests that customers do not have economic options. Even if Pacific's ISDN service is competitive, Pacific's argument does not apply to penalties which the Commission may impose pursuant to PU Code Section 2107 and 2108 because those penalties would not be funded by a reduction in ISDN rates but by shareholder returns.

We consider two serious issues in this portion of this proceeding. One is Pacific's continuing failure to provide adequate service to ISDN customers. From the record developed in this proceeding since the filing of Pacific's application, we can only conclude that Pacific's ISDN service has been consistently neglected. D.97-03-021 found that Pacific had not been providing adequate service on the basis of its own analysis and the information provided by customers. Relying on Pacific's argument that its service could not improve without a substantial rate increase, we granted Pacific most of the rate increase it requested. We directed Pacific to implement certain tariff provisions designed to provide Pacific an incentive to improve its service quality. In spite of the actions we took, Pacific's ISDN service quality deteriorated after the issuance of D.97-03-021 rather than improved. Service quality improvements increased, perhaps coincidentally, after

UCAN filed its motion to investigate the matter again and the Assigned Commissioner stated an intent to take action.

The other matter is Pacific's failure to comply with Ordering Paragraph 4 of D.97-03-021 and the December 5 ruling. The record provides no justification for Pacific's failure to be held accountable for its violation of D.97-03-021. Either Pacific's managers submitted incomplete information knowingly or failed to assume responsibility for assuring the submittal fulfilled the Commission's order. Neither circumstance is acceptable. The Commission received complete information only after UCAN filed a motion seeking Commission action and the Commission responded by directing Pacific to file the information. Normally, we might overlook Pacific's delay in submitting a report. In this instance, however, Pacific presents no justification for the delay and, as a result, also violated a Commission ruling. Although customers were not directly harmed as a result of these violations, much harm may result from a utility's failure to submit to the Commission's authority. We therefore consider our options.

In D.96-09-090, the Commission reviewed a complaint in which a small telecommunications company failed to answer the complaint. For this violation of a procedural requirement, the Commission fined the utility $2,000 per instance. D.96-09-090 relied on PU Code Section 2107, which authorizes the Commission to impose penalties in the range of $500 to $20,000 for a utility's violation of a law, rule or Commission order.

D.96-09-090 provides a reasonable precedent for our action here because in that case, like this one, the utility violated a procedural requirement. Here, Pacific's violation was ongoing. Section 2108 provides that each day's continuance of a violation is a "distinct and separate offense." We therefore fine Pacific for each day it failed to comply with Ordering Paragraph 4 of D.97-03-021. The number of days between September 1, 1997, the date the reports were due,

and the date Pacific filed the complete reports, December 12, 1997 is 103. Because Pacific is a much larger company than the one fined in D.96-09-090, we believe a penalty of $2,000 a day is inadequate. We impose a penalty of $3,000 for each day of violation. Accordingly, we impose a fine of $309,000 for Pacific's violation of Ordering Paragraph 4.

Technically, Pacific did not otherwise violate D.97-03-021 and we are therefore not within our authority under PU Code Section 2107 to fine Pacific for its failure to improve its ISDN service. By this order, however, we will direct Pacific to waive its ISDN installation fees for all business and residential customers in certain cases if, during any three consecutive month period through December 31, 1999, more than 10% of residential and business customers characterize Pacific's ISDN service provisioning and repair services as "poor" or "terrible." In conducting its inquiry, Pacific shall use the same customer survey questions and methods it employed in 1997 and presented in this proceeding. We will direct Pacific to provide the reports on a monthly basis. Pacific's reports shall be accompanied by an affidavit which confirms the use of the existing customer survey questions and methods. ISDN installation fees shall be waived in cases where Pacific fails to keep an appointment for an ISDN installation or where, after Pacific meets the appointment, the customer's ISDN service is not fully operational. Pacific shall affect the installation fee waivers without further Commission order by way of an advice letter which modifies its ISDN tariffs. The installation fee waivers shall become effective no later than 60 days from the last day of the third month of poor performance. In order to reinstate the existing ISDN installation fee tariff provisions, Pacific must file a separate application.

In light of these sanctions, no further action is required at this time. We commend UCAN for bringing this matter to our attention, and both UCAN and CIUG for pursuing the development of the record upon which we act today.

Judicial review of Commission decisions is governed by Division 1, Part 1, Chapter 9, Article 3 of the Public Utilities Code. The appropriate court for judicial review is dependent on the nature of the proceeding. This is an enforcement proceeding brought by the Commission against Pacific Bell, and so this decision is issued in an "adjudicatory proceeding" as defined in § 1757.1. Therefore, the proper court for filing any petition for writ of review is in the Court of Appeal. (See PU Code § 1756(b).)

Parties' Comments on Proposed ALJ Decision

Pacific takes issue with several aspects of the ALJ's proposed decision (PD) which is substantially the same as this final order. We address Pacific's concerns here.

Pacific's Failure to Justify Non-Compliance Between September 1, 1997 and December 12, 1997. Pacific states the PD errs in finding that Pacific failed to provide a witness to explain why its reports were incomplete, as required by the Assigned Commissioner Ruling dated December 5, 1997. Pacific states it presented two witnesses who testified that they believed the information they submitted to the Commission was accurate at the time they submitted it.

The assigned Commissioner's ruling directed Pacific to "submit testimony" to "explain its reasons for failing to submit the information required by Ordering Paragraph 4 of D.97-03-021 in a timely fashion." The witnesses Pacific presented, however, could not provide that information because the witnesses were not responsible for submitting the information to the Commission, did not know who was responsible for the submittals and did not know precisely what information the Commission required.

The witnesses were responsible for compiling customer survey data and yet testified that they had never seen portions of D.97-03-021 — a conclusion of law and an ordering paragraph -- which specified the survey information it

required. The witnesses also testified that they did not know who at Pacific is accountable for Pacific's failure to comply with a Commission order or who was responsible to provide them with the information that would have permitted them to assure Pacific's compliance. Witness Fobroy, who compiled the business data for the September 5 submittal, testified as follows:

"Q. And you were never told that the Commission ordered Pacific to present information separately for business and residential customers?

"A. No, I was not.

"Q. And nobody checked the information that you presented to the Commission to determine whether it was consistent with Ordering Paragraph 8 (sic)?

"A. I have no idea if anybody check my numbers that I turned in." (TR 1628.)

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"Q. I'm just trying to find out whether you understand whether anyone in particular is responsible for Pacific Bell's compliance with Ordering Paragraph 8 (sic) of the ISDN order.

"A. I see it as the whole company is responsible. I don't see one particular person being held responsible or accountable for it." (TR 1629.)

Witness Anthony, who complied the residential survey information submitted in late November, testified similarly:

"Q. And when you were given this task (of compiling residential customer information), were you aware that these reports were to be used to satisfy the requirements of a Commission decision 97-03-021?

"A. I was.

"Q. Had you read that decision or were you familiar with it?

"A. No, I had not seen it." (TR 1659-1660.)

Pacific's attorney stated that the witnesses Pacific presented were not ultimately responsible for Pacific's non-compliance in response to the ALJ's question:

"ALJ:	Mr. Fobroy had never even seen the Ordering Paragraph. How could he possibly be held responsible for presenting the Commission with the information it requested?
"Mr. Mazique:	I'm not saying that Mr. Fobroy is responsible for whatever happened. I'm saying that Mr. Fobroy was given the task of finding the data that the Commission asked for."

Although the witnesses addressed how they erroneously compiled their data, they were not able to justify why Pacific failed to remedy its compliance oversight even after Pacific knew that the survey information it submitted to the Commission did not comply with the Commission's order. On October 21, UCAN sent a letter to the assigned ALJ, copied to Pacific, describing the ways in which the survey information Pacific had provided was inconsistent with the requirements of D.97-03-021. On November 24, 1997, UCAN filed a motion seeking Commission action against Pacific on the basis that the survey information was incomplete. On the same date, Pacific provided the Commission with (inaccurate) residential data for the first time. Between October 21, 1997 and November 24, 1996, Pacific knew that it was out of compliance with the Commission's order and yet failed to mitigate its error by correcting the original submittal. On December 5, 1997, the Assigned Commissioner and ALJ issued a ruling directing Pacific to submit the complete information by December 9. Pacific finally submitted complete and correct survey information on December 12.

Pacific's witnesses did not have the knowledge required to respond to questions about the reasons for delay:

"Q. Were you aware of a letter that UCAN had sent to the Commission which was dated October 21st – and a copy of that letter was also sent to Pacific Bell – that described some specific problems with the September 5th filing:

"A. I did become aware of that letter. I don't believe I knew about it when I was preparing the residential results. In fact, I know I didn't." (TR 1662-1663.)

Pacific made a reasonable mistake by failing to provide complete and accurate information in compliance with a Commission order. The penalty we impose today is not for this oversight. It is imposed for Pacific's failure to justify its continuing disregard for the Commission's order after it knew or should have known that it was not in compliance with a Commission order and for failing to comply with an assigned Commissioner ruling which directed Pacific to present a witness who understood the reasons for the mistake. We confirm the findings of the ALJ's PD in this regard.

ISDN Service Quality During 1997. Pacific's comments argue that the PD errs by implying that Pacific's service quality has not improved since the issuance of D.97-03-021. In fact, Table 1, attached to the PD and presented in the proceeding by Pacific, demonstrates that Pacific's ISDN service quality deteriorated markedly after the issuance of D.97-03-021. Service quality began to improve in Fall 1997. Even so, the service quality statistics fell below the standard established in D.97-03-02 *in every month* and *in every category* except one during 1997. That is, Pacific failed to meet the standard in 47 out of 48 instances.[1]

[1] That standard requires that Pacific's customer survey include fewer than 10% of responses characterizing service parameters as "poor" or "inadequate." Pacific's survey results do not include a category titled "inadequate," instead using the term "terrible" to which we refer in our assessment of customer satisfaction. Accepting this difference is to Pacific's advantage because the term "terrible" is arguably a less flattering characterization than "inadequate."

Pacific's comments seek to justify its poor record of service by arguing that the 10% standard adopted for ISDN service quality in D.97-03-021 is inappropriate. The wisdom of the 10% benchmark is not within the scope of this portion of this proceeding and we therefore disregard Pacific's comments which seek to discredit it.

Pacific's comments characterize as an unjustified "penalty" the PD's proposal to suspend ISDN installation charges if Pacific does not make further improvements to its service quality. This decision , however, does not impose a penalty on Pacific for poor service quality. Rather, it states an intent to impose a penalty if Pacific's ISDN service falls below the benchmarks we established in D.97-03-021 and which Pacific has had ample time to accommodate.

Justification for a Penalty. Pacific believes the penalty imposed by the PD is unjustified and argues that the PD provides "no support" for the amount of penalty it would impose. It takes issue with the PD's reliance on D.96-09-090, which imposed a $2,000 penalty on a utility that failed to comply with a Commission rule.[2]

While Pacific may argue the logic of the PD's analogizing to D.96-09-090, the Commission's authority is not bounded by its past orders. In assessing penalties to be imposed on a utility, the only support we require is provided by statute. Section 2107 states:

> "Any public utility which...fails or neglects to comply with any part or provision of any order, decision , decree, rule, direction, demand, or requirement of the commission...is subject to a penalty of not less than five hundred dollars ($500) nor more than twenty thousand dollars ($20,000) for each offense."

[2] Pacific also objects to the reference to D.95-09-073, which was referred to by the PD in error and which we have corrected.

Section 2108 provides that "each day's continuance thereof shall be a separate and distinct offense."

The PD's reliance on Section 2107 and 2108 for imposing a penalty on Pacific for its failure to comply with Ordering Paragraph 4 of D.97-03-021 is proper. The Commission has discretion to establish any level of penalty authorized by the statute as long as it is not arbitrary. Although the penalty we impose today is higher than those imposed in some other cases, it nevertheless reflects the seriousness with which we view disregard of our orders and rulings. A most basic premise of regulation is that when the Commission's issues an order, the utility will comply with it. Here, Pacific failed to comply with the Commission's order after it was aware of its noncompliance, requiring our intervention and the expenditure of considerable resources litigating compliance. During that process of litigation, Pacific violated a ruling by failing to present a witness to explain Pacific's lack of compliance. A utility's failure to comply with Commission orders and rulings, and a subsequent failure of the Commission to enforce those orders and rulings, would represent a breakdown of the compact between government and the regulated utility. For that reason, we impose a penalty which, while not punitive in light of Pacific's vast resources, is nevertheless substantial.

Findings of Fact

1. Pacific violated D.97-03-021 by failing to submit to the Commission in a timely manner the information required by Ordering Paragraph 4 regarding the results of customer surveys.

2. Pacific violated the Assigned Commissioner Ruling dated December 5, 1997 by failing to present a witness who could explain the reasons Pacific failed to comply with Ordering Paragraph 4 of D.97-03-021 in a timely manner.

3. Pacific's ISDN service was inadequate for most of 1997.

4. Pacific has taken some steps to improve ISDN service.

5. The Commission does not refrain from imposing sanctions in cases where doing so would result in financial loss.

6. Pacific has not demonstrated that the market offers services to small and medium sized customers which are economic substitutes for ISDN services.

Conclusions of Law

1. The Commission should fine Pacific $309,000 for its failure to comply with Ordering Paragraph 4 of D.97-03-021.

2. The Commission should order Pacific to waive its ISDN installation fees in certain cases if, during any three consecutive months through December 31, 1999, Pacific's residential or business customers characterize Pacific's ISDN provisioning or repair services "poor" or "terrible," as set forth herein.

3. This is an enforcement proceeding, and this decision is issued in an "adjudicatory proceeding" as defined in Public Utilities Code § 1757.1. Therefore, the proper court for filing any petition for writ of review will be the Court of Appeal.

O R D E R

IT IS ORDERED that:

1. For violation of a Commission order and pursuant to Sections 2107 and 2108 of the Public Utilities (PU) Code, Pacific Bell (Pacific Bell) is penalized in the amount of $309,000 and is ordered to pay to the State Treasury of California the amount of $309,000, plus interest at 7% accruing from the date of this order, to the credit of the General Fund pursuant to PU Code Section 2104.

2. Pacific shall modify its Integrated Services Digital Network (ISDN) tariffs for all business and residential customers if, during any three consecutive month period through December 31, 1999, more than 10% of residential and business

customers characterize Pacific's ISDN service provisioning and repair services as "poor" or "terrible." In conducting its inquiry, Pacific shall use the same customer survey questions and methods it employed in 1997 and presented in this proceeding. Pacific shall provide the reports on a monthly basis. Pacific's reports shall be accompanied by an affidavit which confirms the use of the existing customer survey questions and methods. The tariff modifications shall require Pacific to waive all installation fees in cases where Pacific fails to keep an appointment for ISDN installation or if, after keeping an installation appointment, the customer's ISDN service is not fully operational. Pacific shall affect the installation fee waiver without further Commission order by way of an advice letter which modifies its ISDN tariffs. The installation fee waivers shall become effective no later than 60 days from the last day of the third month of poor performance. In order to modify these tariff provisions regarding installation fee waivers, Pacific must file a separate application and receive Commission approval.

3. This proceeding is closed.

This order is effective today.

Dated September 17, 1998, at San Francisco, California.

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

TABLE 1
ISDN Overall Customer Satisfaction
Jan - Dec 1997

QT15 - ISDN Business Provisioning

	Jan-97	Feb-97	Mar-97	Apr-97	May-97	Jun-97	Jul-97	Aug-97	Sep-97	Oct-97	Nov-97	Dec-97
Excellent	17.4%	26.8%	25.8%	25.3%	26.7%	23.3%	21.4%	26.2%	34.3%	34.5%	30.2%	33.0%
Good	44.7%	43.5%	37.7%	34.4%	34.8%	43.3%	44.3%	36.9%	33.6%	41.2%	45.6%	46.4%
Just OK	19.3%	10.7%	15.0%	15.6%	17.0%	10.0%	12.2%	16.4%	15.7%	18.2%	13.2%	6.2%
Poor	10.6%	10.1%	13.8%	12.4%	14.8%	12.5%	10.7%	6.6%	6.7%	2.0%	5.9%	8.2%
Terrible	8.1%	8.9%	7.8%	12.4%	6.7%	10.8%	11.5%	13.9%	9.7%	4.1%	5.2%	6.2%
Total Sample	161	168	167	186	135	120	131	122	134	148	136	97

QT15 - ISDN Residence Provisioning

	Jan-97	Feb-97	Mar-97	Apr-97	May-97	Jun-97	Jul-97	Aug-97	Sep-97	Oct-97	Nov-97	Dec-97
Excellent	20.6%	21.4%	29.0%	28.8%	21.4%	14.9%	16.4%	26.1%	24.8%	24.3%	25.6%	29.2%
Good	32.4%	29.8%	32.3%	30.3%	38.6%	34.5%	29.5%	23.2%	30.7%	38.9%	45.4%	44.9%
Just OK	19.1%	22.6%	16.1%	24.2%	15.7%	18.4%	6.6%	17.4%	15.8%	14.6%	12.8%	10.1%
Poor	10.3%	17.9%	17.2%	9.1%	14.3%	12.6%	24.6%	23.2%	12.9%	13.2%	11.6%	2.2%
Terrible	17.7%	8.3%	5.4%	7.6%	10.0%	19.5%	23.0%	10.1%	15.8%	9.0%	4.7%	13.5%
Total Sample	68	84	93	66	70	87	61	69	101	144	86	89

QT25 - ISDN Business Maintenance

	Jan-97	Feb-97	Mar-97	Apr-97	May-97	Jun-97	Jul-97	Aug-97	Sep-97	Oct-97	Nov-97	Dec-97
Excellent	31.5%	23.1%	23.8%	22.2%	17.4%	17.8%	18.3%	24.7%	19.2%	22.4%	24.7%	22.4%
Good	29.2%	30.8%	37.5%	49.1%	44.9%	33.3%	41.5%	35.8%	49.0%	44.7%	46.6%	36.7%
Just OK	18.0%	25.6%	15.0%	13.9%	24.6%	20.0%	22.0%	16.1%	13.5%	18.4%	17.8%	24.5%
Poor	9.0%	11.5%	17.5%	11.1%	8.7%	18.9%	12.2%	13.6%	11.5%	9.2%	5.5%	10.2%
Terrible	12.4%	9.0%	6.3%	3.7%	4.4%	10.0%	6.1%	9.9%	6.7%	5.3%	5.5%	6.1%
Total Sample	89	78	80	108	69	90	82	81	104	76	73	49

QT25 - ISDN Residence Maintenance

	Jan-97	Feb-97	Mar-97	Apr-97	May-97	Jun-97	Jul-97	Aug-97	Sep-97	Oct-97	Nov-97	Dec-97
Excellent	25.7%	24.4%	21.2%	21.0%	21.4%	21.1%	19.4%	26.5%	20.9%	24.0%	26.9%	32.0%
Good	36.3%	36.5%	40.9%	37.7%	40.7%	40.2%	30.4%	35.0%	38.4%	36.5%	43.9%	36.7%
Just OK	21.6%	15.7%	12.9%	12.6%	17.9%	19.6%	25.1%	16.5%	19.8%	18.5%	17.7%	18.8%
Poor	10.5%	8.7%	15.2%	15.0%	10.7%	10.3%	11.0%	14.6%	12.2%	12.5%	6.9%	7.8%
Terrible	5.9%	14.8%	9.9%	13.6%	9.3%	8.8%	14.1%	7.5%	8.7%	8.5%	4.6%	4.7%
Total Sample	171	115	132	167	140	194	191	200	172	200	130	128

(END OF TABLE 1)