

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION  
Accounting and Finance Branch

RESOLUTION F-619  
May 11, 1988

## R E S O L U T I O N

ORDER AUTHORIZING PACIFIC BELL COMPANY TO ENTER INTO A RATEPAYER EDUCATION TRUST AGREEMENT FOR THE PURPOSE OF PROMOTING RATEPAYER EDUCATION AND UNDERSTANDING OF THE TELECOMMUNICATIONS SYSTEM. (Compliance with Decision 87-12-067, Order No.6).

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SUMMARY

1. Pursuant to Ordering Paragraph 6(a) of the Commission's Decision 87-12-067 (Decision) dated December 22, 1987 in Pacific Bell's (Pacific) general rate case, Pacific submitted to the Commission Advisory and Compliance Division (CACD) a draft of the Ratepayer Education Trust (Trust) instrument.
2. We find that it is reasonable to approve the proposed Trust Agreement as amended and that the Agreement meets the specific requirements set forth in the Decision.
3. Pacific has submitted to the Internal Revenue Service and the California Franchise Tax Board the requisite applications to obtain exemption from income taxes with respect to the Trust, pursuant to Internal Revenue Code Section 501(c)(4) and California Revenue and Taxation Code Section 23701(f).
4. We find that it is reasonable to approve Anthony D. Samson and Carl K. Oshiro as the consumer representatives on the Disbursements Committee, as recommended by the Commission's Public Advisor.
5. We find it reasonable to appoint The Bank of California as Financial Trustee.

BACKGROUND

1. Ordering Paragraph 6 of Decision 87-12-067, dated December 22, 1987, at page 326 directs Pacific Bell to charge an appropriate nonoperational expense account in the amount of \$16.5 million, and set that amount aside in a special interest bearing account, pending establishment of a legal trust designed to further the goal of ratepayer educational efforts. Pacific was directed to inform the Director of CACD by letter of the precise actions taken in compliance with the preceding directive. A letter dated January 5, 1988 was submitted in compliance with the Decision.

2. Pertinent part(s) of Decision 87-12-067 found that:

(a) Pacific had violated Public Utilities Code Section 532, General Order 153, and Tariff Rules 6 and 12 in connection with its marketing activities; based on the evidence presented by DRA the Commission issued D.86-05-072 ordering Pacific to cease and desist from such violations.

(b) \$16.5 million is an appropriate penalty for a limited purpose designed specifically to fund a ratepayer education program aimed at ensuring that marketing abuses do not occur again.

(c) That the \$16.5 million penalty be funded entirely by Pacific Bell's shareholders.

3. The interim Trust Agreement was executed on behalf of Pacific on December 31, 1987 by Ken Murphy, Pacific's Vice President and Comptroller. Two Pacific Telesis Group employees, Richard N. Rose and Kristina Veaco, served as co-trustees. Immediately after the Trust was fully executed, Pacific delivered to the trustees a Pacific Bell check in the amount of \$16.5 million. The trustees deposited the check in a separate interest bearing account at the Bank of America on January 4, 1988.

4. The original trustees are to resign upon Commission approval of the final Trust document, and upon the appointment of new trustees. The trustees will transfer the funds to the new trustees approved by the Commission.

DISCUSSION

1. In lieu of the penalties recommended by several parties, including the Division of Ratepayer Advocates (DRA), Pacific was ordered to set aside \$16.5 million of shareholder assets to fund a ratepayer education trust fund. The goal of the Trust is to disburse approximately \$3 million per year to promote ratepayer education efforts, over the next five years. The balance remaining at the end of the fifth year shall be disbursed in year six.

2. Promoting ratepayer education efforts, as discussed in the Decision, includes but is not limited to, the following activities:

- (a) Mass media programs.
- (b) Educational forums.
- (c) Community outreach efforts or grants to selected groups.

3. In carrying out the provisions of the Decision, Pacific Bell and CACD have agreed that the ratepayer education trust fund shall operate at a minimum, with certain guidelines and safeguards. The Trust is a legal entity separate and apart from Pacific's books of accounts and corporate entity.

4. Decisions regarding disbursements shall be made by a Disbursement Committee composed of one Pacific Bell, one DRA, and two consumer representatives (two individuals chosen by the Commission) with each member having one vote. If the committee is unable to make a decision on a particular disbursement, or its members are otherwise deadlocked, the Commission's Public Advisor who is also on the Committee shall seek to mediate the dispute, and then cast a deciding vote, if necessary.

5. The Disbursements Committee shall meet at least annually to make disbursement decisions, based on proposals presented by its members. The financial trustee shall then make the disbursements in accordance with the decisions reached at the annual committee meeting.

6. The Commission is concerned that disbursements not further Pacific's marketing programs or corporate profit motives, and that they not duplicate, directly or indirectly, programs covered by authorized commercial expenses included in Pacific's rates. In addition, no disbursements made, or proposals presented for consideration, shall directly benefit any of the voting members.

7. The financial trustee shall file with the Commission's Executive Director annual accountings at the end of each calendar year of the Trust's existence, indicating the following:

- (a) The amounts disbursed during the preceding calendar year.
- (b) To whom the disbursements were made.
- (c) The account or Trust balances as of the end of the accounting period.

A final accounting shall be made reflecting the final disbursement of the Trust balance after the year six disbursement.

8. The financial trustee shall disburse the balance remaining in the Trust fund at the end of five calendar years during year six on the same basis as the preceding five calendar years, at which time the Trust will terminate.

9. The CACD has consulted with the Legal Division and believes that the changes to Pacific's final draft of the Trust Agreement are necessary. These changes have been accepted by Pacific.

10. The staff of the CACD has reviewed the amended Trust Agreement and finds that it is in conformance with the requirements of Decision 87-12-067.

11. The Commission has received no protests in this matter.

12. The Public Advisor has met with representatives of Pacific Bell and DRA, to obtain their assistance and cooperation in soliciting two consumer representatives for membership on the disbursements committee. Based on the criteria set forth in the Decision, the Public Advisor recommended the following parties to fill the positions on the disbursements committee: Anthony D. Samson Chief of the Fraud Division for the San Diego District Attorney; and Carl Oshiro, an attorney in private practice. The CACD concurs in recommending approval of the Public Advisor's nominees.

13. Working in conjunction with Pacific Bell and the Pacific Telesis Group, the CACD interviewed two banks after an initial review by Pacific Telesis Group for a Financial Trustee. Based upon a consideration of services to be provided, limited investment criteria contained in the Trust Agreement and competitive fees, the CACD recommends appointing The Bank of California as Financial Trustee.

14. The Bank of California has proposed a fee structure that will be guaranteed for the life of the trust and includes the preparation of all Trustee prepared reports, investment of principal in an investment fund, and preparation of all tax returns for the Trust. The Bank of California currently functions as Trustee for the Commission's D.E.A.F. Trust Fund. This was not a critical factor in the CACD's review and recommendation.

FINDINGS

1. We find that it is reasonable for Pacific Bell to place in effect the proposed final Ratepayer Education Trust Agreement pursuant to Decision 87-12-067.
2. We further find that the proposed final Trust Agreement is in compliance with the provisions of Decision 87-12-067.
3. We further find that the Public Advisor's nominees, Anthony D. Samson and Carl K. Oshiro should be appointed to the Trust Disbursements Committee.
4. We further find that the Bank of California should be appointed as Financial Trustee.

IT IS ORDERED THAT:

1. The Ratepayer Education Trust is established pursuant to the terms and conditions set forth in Decision 87-12-067, dated December 22, 1987 and in accordance with the Trust Agreement submitted by Pacific Bell in its Compliance filing, and as modified, and hereby approved.
2. All subsequent proposed trust agreements and modifications if any, shall also require Commission approval.
3. All previous trust agreements submitted in accordance with Decision 87-12-067 are to be terminated and hereby replaced with the amended Trust Agreement.

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The effective date of this Resolution is today.

I hereby certify that the foregoing Resolution was duly introduced, passed and adopted at a regular meeting of the Public Utilities Commission of the State of California, held on March 23, 1988. The following Commissioners approved it:

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners



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Executive Director

May 5, 1988

RATEPAYER EDUCATION TRUST AGREEMENT

This Ratepayer Education Trust Agreement (the "Trust" or "Trust Agreement"), is entered into on this \_\_\_\_ day of \_\_\_\_\_ 1988 by and between Pacific Bell ("Pacific"), Victor R. Weisser, Executive Director of the California Public Utilities Commission ("CPUC") on behalf of the CPUC and Bank of California, as Trustee, pursuant to CPUC Decision 87-12-067, dated December 22, 1987, in Pacific's general rate case (A.85-01-034). The purpose of this Trust is to promote ratepayer education and understanding of the telecommunications system, by means, including, but not limited to, mass media programs, educational forums, community outreach efforts or grants to selected groups; provided however, that the distribution of the principal or income of the Trust shall not jeopardize the federal or state income tax exemption of the Trust. This Trust Agreement is a continuation and modification of that certain Trust Agreement (the "Interim Trust"), effective December 31, 1987, between Pacific and Richard N. Rose and Kristina Veaco (the "Interim Trustees") whereby Pacific, pursuant to CPUC Decision 87-12-067, transferred \$16.5 million to the Interim Trustees to be used to further the goal of ratepayer educational efforts. A copy of the Interim Trust is attached hereto as Exhibit "A".

## I. GENERAL

1.1 Trust Assets. The assets of this Trust shall consist of the cash in the amount of SIXTEEN AND ONE-HALF MILLION DOLLARS (\$16.5 million), plus accrued interest (hereinafter collectively referred to as the "Funds") held in trust by the Interim Trustees under the Interim Trust. The Trustee shall hold the Funds in trust for the primary benefit of Pacific Bell ratepayers, and except as provided in Article II of this Trust Agreement, or otherwise as directed by the CPUC, payments from the Trust shall be made solely for the purpose of promoting "ratepayer education and understanding of the telecommunications system, and to educate ratepayers about their service options in the increasingly competitive telecommunications environment" in accordance with CPUC Decision 87-12-067, and for reasonable expenses of administering this Trust.

1.2 Qualification for Exemption from Federal and State Income Taxes. Pursuant to CPUC Decision 87-12-067, Pacific shall seek exemption of this Trust from federal and state income taxes as a social welfare organization under Internal Revenue Code of 1986 Section 501(c)(4) and California Revenue and Taxation Code Section 23701f, respectively.

1.3 Acceptance of Trust and Trustee's Standard of Care. The Trustee accepts the Trust subject to all of the terms and conditions of this Trust Agreement. In carrying out each of its responsibilities under the Trust, the Trustee shall exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity



and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the Trust.

1.4 Disbursements Committee. All decisions regarding payment of amounts or disbursement of funds by the Trust shall be made by the Disbursements Committee (the "Committee"). Pursuant to CPUC Decision 87-12-067, the Committee shall be comprised of five members, four (4) regular voting members, and the Public Advisor of the CPUC, who in the event of a tie or the inability of the Committee to make a decision, shall cast the tie-breaking vote or mediate any dispute. The four (4) voting members of the Committee shall include one representative from each of the following: Pacific, the Division of Ratepayer Advocates ("DRA") of the CPUC, and \_\_\_\_\_ and

\_\_\_\_\_. The Committee shall elect a Chairperson, Vice Chairperson and Recording Secretary. Each Committee member shall provide the Trustee, the Public Advisor of the CPUC, and the Chairperson of the Committee with his/her address and telephone number. The Committee shall act by majority vote. Each Committee member shall be entitled to one equal vote. Votes of members of the Committee shall be recorded on all matters voted on or decided by the Committee. The members of the Committee, in the performance of their duties under this Trust Agreement, and in the actions taken by the Committee shall at all times be subject to the outstanding orders issued by the CPUC. Any member of the Committee may be removed at any time by the CPUC, by notice, in writing to the Trustee and members of the

Committee. Subject to approval by the CPUC, and unless the CPUC directs otherwise, Pacific or its successor and DRA shall each have the right, from time to time, and at any time, to name a successor to or to replace its designee as a Committee member. In the event either consumer representative on the Committee resigns or becomes ineligible to serve on the Committee, the Public Advisor of the CPUC, in consultation with Pacific and DRA, shall recommend another consumer representative to fill the vacancy on the Committee. Any changes in the membership of the Committee shall be promptly communicated in writing to the Trustee and the Public Advisor of the CPUC. The CPUC shall have the power to conclusively decide any question involving the Trust. The Trustee shall be subject to the control and direction of the Committee, but if any disagreement arises between the CPUC and the Committee concerning the Trust, the Trustee shall act in accordance with the direction given by the CPUC.

## II. DISTRIBUTIONS

2.1 Purpose of Distributions. To establish a program of disbursements for each year, the Committee shall meet within 90 days of the date of the approval of the Resolution authorizing the Trust and shall then set a schedule for subsequent meetings. The Disbursements Committee shall have as a goal, the disbursement of at least Three Million Dollars (\$3 million) per year out of the assets of the Trust over a five-year period. The Trustee, on the written directions from the Chairperson and the Director of the Commission Advisory and Compliance Division, shall disburse the funds for proposals approved by the Committee to promote

ratepayer education and understanding of the telecommunications system, including, but not limited to, mass media programs, educational forums, community outreach efforts or grants to selected groups; and while the funds are held in trust primarily to benefit Pacific ratepayers, no proposal shall be disapproved for the sole reason that ratepayers of other telephone companies would be provided with educational benefits by the proposal; and further provided, however, that no disbursement of any assets of the Trust shall jeopardize the federal or state income tax exemption of this Trust. Any question as to whether a proposed disbursement may jeopardize the tax exempt status of the Trust shall be determined and resolved by the General Counsel of the Public Utilities Commission. Except as provided in Section 2.2 below, no member of the Committee, or any officer, agent, director, client or person or entity affiliated with any such member shall have access to, or be benefitted by, the funds disbursed by the Committee. At the end of five years of disbursements, the Trustee shall disburse the remaining balance in the Trust in year six on the same basis as provided in this Section 2.1.

2.2 Reimbursement of Expenses. Except as provided in this Section 2.2, the Committee members, except the representatives of Pacific, the DRA, and the Public Advisor of the CPUC, shall be entitled to reimbursement or direct payment from the Trust for reasonable expenses incurred by them in the performance of their duties hereunder. The representatives of Pacific and DRA and the Public Advisor of the CPUC shall not be

entitled to reimbursement or direct payment from the Trust for any expenses incurred by them in the performance of their duties hereunder. No Committee members shall be entitled to receive a salary or other compensation from the Trust.

2.3 Liability of Trustee. The Trustee shall incur no liability for any distribution it makes according to the written directions of the Disbursements Committee or CPUC. Any payment by the Trustee may be made by mailing its check to the address furnished in writing by the Disbursements Committee or CPUC.

2.4 Taxes. The Trustee shall from time to time charge against and pay out of the Trust Fund taxes that are lawfully levied or assessed upon or become payable with respect to the Trust Fund or the income thereof.

### III. POWERS OF TRUSTEE

The Trustee shall have the authority and responsibility to invest and reinvest Trust assets in accordance with the standard established in Section 1.3. The Trustee shall also have all the powers necessary to hold in trust and manage the assets of the Trust, including, but not by way of limitation, the power:

3.1 To establish bank accounts, including with its own commercial department, and to collect and receive the income of the Trust and any and all property of the Trust. The Trustee, on written direction from the Committee, may invest the Trust funds until directed otherwise in writing, in U.S. Treasury obligations and mutual funds.

3.2 To extend the time of payment of any obligation owing to the Trust, and to deposit any property with and to

delegate discretionary powers to any protective, reorganization or similar committee, including the power to pay expenses, compensation, and assessments levied with respect to the deposited property.

3.3 To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend legal proceedings for or against the Trust, and to represent the Trust in all proceedings in any court of law or equity or before any other tribunal, subject to prior approval by the Executive Director of the CPUC.

3.4 To sue or defend in connection with any property held at any time by the Trust, the related costs and attorneys' fees to be a charge against the Trust, subject to prior approval by the Executive Director of the CPUC.

3.5 To appoint agents, including, without limitation, appraisers, actuaries, accountants, or legal counsel.

#### IV. BOOKS, RECORDS AND REPORTS

4.1 Books and Records; Annual Reports. The Trustee shall keep accurate books and records reflecting investments, receipts, disbursements and any other transactions engaged in by the Trust, and the expenditures for each of the separate programs or activities funded by the Trust shall be accounted for separately. The books and records shall be open to inspection at all reasonable times by the CPUC, the Committee or its designated representatives, or any member of the Committee. As soon as reasonably practicable after the end of each calendar year, the Trustee shall submit an annual statement, to the Executive

Director of the CPUC and to each member of the Committee, setting forth the following information:

- a. Disbursement of funds for the preceding year and the identity of those receiving the disbursements.
- b. Purchase, sale, redemption or exchange of Trust investments.
- c. Receipt of income on invested assets.
- d. Other disbursements.
- e. List of Trust assets showing market values, cost and estimated annual income of all holdings.

V. RESIGNATION OR REMOVAL OF TRUSTEE

The Trustee may resign at any time by giving thirty (30) days' prior written notice to the Executive Director of the CPUC; provided however, such resignation shall not become effective until the appointment of a successor trustee. The CPUC may remove the Trustee at any time upon the giving of thirty (30) days' prior written notice to the Trustee and the members of the Disbursements Committee. Upon the removal or resignation of the Trustee, the CPUC may appoint a successor trustee or trustees, which may be a corporation, one or more individuals, or a combination thereof. Any successor trustee shall have the same rights, powers and duties as its predecessor.

## VI. COMPENSATION OF TRUSTEE; EXPENSES

6.1 Compensation of Trustee. The Trustee shall be entitled to reasonable compensation for its services as Trustee under this Trust Agreement at a rate to be agreed upon from time to time between the Trustee and the Disbursements Committee.

6.2 Expenses. The Trustee shall deduct from and charge against the assets of the Trust reasonable administrative expenses, including but not limited to, bank fees, liability insurance for Disbursements Committee members, fees paid to appraisers, actuaries, accountants and legal counsel, if any, and compensation of the Trustee.

## VII. AMENDMENT, REVOCATION AND TERMINATION

The Trust may be amended, extended, terminated or revoked at any time pursuant to order of the CPUC. Upon revocation or termination, the assets of the Trust shall be distributed by the Trustee in accordance with this Trust Agreement. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Trust Agreement as are necessary and expedient for the orderly liquidation and distribution of the assets of the Trust.

## VIII. MISCELLANEOUS

8.1 Indemnification. The Trust shall indemnify and hold harmless the Trustee, its officers, employees, agents, successors and assigns, and the members of the Committee and their successors, against all liabilities, demands, claims, actions, losses, taxes, expenses (including reasonable attorneys'

fees) arising out of acts or omissions with respect to this Trust, except in the case of willful misconduct, gross negligence, fraud or criminal acts.

8.2 No Liability. Pacific, Pacific Telesis Group and Pacific's affiliated companies and their respective officers, directors, agents, employees, successors, and assigns, shall have no liability to the CPUC, the Disbursements Committee, Trustee or any other person or entity for any act or omission arising out of or in any way connected this Trust, the purposes of this Trust, the disbursements or disbursement decisions made by the Committee.

8.3 Reversion of Assets Prohibited. No portion of the assets in the Trust shall revert to Pacific or be diverted to purposes other than ratepayer education as set forth in CPUC Decision 87-12-067 or subsequent modifications thereof.

8.4 Termination of Trust. Unless earlier or later terminated or extended by the CPUC, this Trust shall terminate seven (7) years from the date hereof.

8.5 Applicable Law; Severability. This Agreement shall be construed in accordance with the laws of the State of California. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall not affect any other provision, and it shall be construed and enforced as if the invalid or unenforceable provision had not been included.



8.6 Notice. Wherever in this agreement notice is provided or required to be given, such notice shall be transmitted by first class mail.

8.7 Resignation of Interim Trustees. The Interim Trustees shall resign and execute the statement, which is attached hereto, as Exhibit "B" and incorporated by reference herein, upon the approval of the Trust by the CPUC.

PACIFIC BELL

CALIFORNIA PUBLIC  
UTILITIES COMMISSION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

BANK OF CALIFORNIA

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

EXHIBIT B

Resignation of Interim Trustees

We agree to the modification of the Interim Trust effected by this Trust Agreement. Effective with the approval of of this Trust by the CPUC, we hereby resign as Trustees.

\_\_\_\_\_  
KRISTINA VEACO

\_\_\_\_\_  
RICHARD N. ROSE

Date: \_\_\_\_\_

Date: \_\_\_\_\_