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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION  
Telecommunications Branch

RESOLUTION NO. T-12077  
March 23, 1988

R E S O L U T I O N

Resolution rejecting Pacific Bell's Advice  
Letter No. 15358

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WHEREAS: In D.87-01-042 the Commission issued an interim decision in its ongoing 976 investigation which directed Pacific to allow customers to make content related decisions regarding 976 services through use of the blocking option and found that the access to 976 dial-a-porn messages be limited to adults through the use of an access code which is required by federal law; and

WHEREAS: Subsequent to this decision, the California legislature passed AB 976 which adopted the federal scheme for controlling access of 976 dial-a-porn to prevent access by children; and

WHEREAS: The Commission ordered Pacific to delete from its 976 tariff the provision authorizing disconnection on the basis of content; and

WHEREAS: The Commission in making this decision believed that blocking and compliance with the access code scheme required by federal and state law offered a workable approach to dealing with access by children to dial-a-porn; and

WHEREAS: The Commission also found that having made the above determinations, it was not necessary for the Commission to deal directly with content questions; and

WHEREAS: Pacific Bell filed Advice Letter No. 15358 on March 2, 1988 which would change its tariffs to permit the utility in its sole discretion to disconnect 976 Information Access Services on the basis of sexually-oriented content; and

WHEREAS: Pacific Bell's Advice Letter No. 15358 raises the question of whether the Commission's content neutral ruling is applicable to Pacific's private actions; and

WHEREAS: The Commission intends to clarify that D.87-01-042 never intended that its content neutral policy would extend beyond actions taken by the Commission and dictate whether or not a utility company could institute its own policies with regard to the content of 976 messages; and

WHEREAS: Private parties are free to develop their own policies in regard to content so long as they remain in compliance with state and federal law; and

WHEREAS: The Commission notes that subsequent to the issuance of D.87-01-042 the United States Court of Appeals for the Ninth Circuit issued a decision in Carlin Communications, Inc. et al. v. Mountain States Telephone and Telegraph Company, 827 F.2d 1291, which held that while a public utility must offer its services to all persons without discrimination, the utility may make a decision not to serve a class of customers based on a reasonable business classification; and

WHEREAS: The Court also found that when a utility made an independent decision not to serve a class of customers because they offered salacious messages on a 976 network, it was not a state actor and it did not assume a "public function" when it exercised censorship powers; and

WHEREAS: The Court found that private parties may censor pornography without a prior judicial determination of its obscenity; and

WHEREAS: Advice Letter No. 15358 proposes a changed tariff sheet not resulting in an increased rate, toll, rental or charge, and would, absent Commission action, become effective on April 12, 1988 pursuant to the provisions of General Order No. 96-A; and

WHEREAS: The Commission has determined that Advice Letter No. 15358 should be rejected, however, Pacific Bell's Advice Letter was not noticed on the public agenda, therefore, the necessity of addressing the proposed tariff because it would automatically become effective under General Order No. 96-A before the next Commission meeting constitutes a sufficient emergency to warrant the Commission's action on the Advice Letter at this time. Therefore,

IT IS ORDERED that:

1. As a result of the above, it would be inconsistent with the Commission's position in D.87-01-042 to have the Commission approve a content-related 976 tariff provision.
2. A private utility is free to set its own policy regarding the content of 976 programming as long as it is in compliance with state and federal law.
3. Pacific's Advice Letter No. 15358 is rejected.

The effective date of this resolution is today.

I hereby certify that the foregoing resolution was duly introduced, passed and adopted at a regular conference of the Public Utilities Commission of the State of California, held on MAR 23 1988, the following Commissioners voting favorably thereon:

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners



Victor Weixler  
Executive Director of the Public Utilities  
Commission of the State of California