

Filed 11/23/88
Telecommunications Branch

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-13032
November 23, 1988

R E S O L U T I O N

Pacific Bell. Order authorizing the establishment
of Sales Agency Program as a provisional tariff.

SUMMARY

The resolution authorizes Pacific Bell (Pacific) to offer a Sales Agency Program to Customer Premises Equipment (CPE) vendors who may become authorized Sales Representatives. As such the CPE vendor will be able to sell Centrex and Commstar II network services in combination with, or in place of CPE. These services may be offered by the sales representative only at published tariffed rates. The customer that purchases network services from a sales representative will have the same remedial rights against Pacific Bell as if Pacific Bell had directly sold the network services to the customer. The authorized sales representative will be paid a commission based on a percentage of annual recurring revenues. The vendor must sign a Network Marketing Agreement.

Because this is a new program and Pacific's forecasts may not be accurate, this offering will be a provisional tariff for two years. This program must be adjusted so that Sales Agency commission levels do not exceed the marketing expense which Pacific would incur if it marketed each service itself.

North American Telecommunications Association (NATA) and California Teleconnect Association (CTA) filed a joint protest on November 18, 1988.

BACKGROUND

On October 31, 1988, Pacific filed Advice Letter No. 15472, requesting authorization to introduce the Sales Agency Program and Network Marketing Agreement. The Sales Agency Program will allow Customer Premises Equipment (CPE) vendors to become authorized sales representatives. These authorized representatives may market, on a commission basis, within geographical areas designated by Pacific, Network Services and Exchange Services at

the rates and charges and within the regulations as set forth in Pacific's tariffs. Although the authorized sales agent will be selling the network services, Pacific Bell has the total responsibility for installing, maintaining, and billing the tariffed network services.

Under this program, Pacific will pay commissions for Centrex and Commstar II services sold by authorized sales agents. The sales agents will sell Centrex and Commstar II services for tariffed rates and charges as set forth in Pacific's tariffs. The sales agents' commissions will range from 8 to 16% of the first year's recurring revenue for new services and additions to services previously sold by the authorized sales representative. The commission will be paid within 30 days of the sale; however, if the service does not remain in place for at least 6 months, 100% of the commission will be debited from future commissions.

Inclusion of additional products and services in the sales agency program, renewal of the sales agency program, and changes in pricing terms or conditions for sales commissions are subject to California Public Utilities Commission (CPUC) approval through the Advice Letter procedure set forth in General Order 96-A. (Advice letters are effective no sooner than the 40th calendar day after the filed date unless authorization by the Commission is obtained first.) Changes that are minor in nature, such as a change in geographical areas in which sales agents may operate, changes within the approved range of commission payments, and contract duration, may be made without formal Commission review. Pacific, however, must inform the Commission in writing 30 days in advance of such changes.

Prior to acting as a sales representative, each CPE vendor must sign the Network Services Marketing Agreement. This agreement describes the sales agents' responsibility to use ethical sales and business practices and to adhere to a sales quality assurance program. It also covers Pacific's obligations such as providing sales support, training and sales aids. Failure to meet all requirements and standards set forth in the agreement will result in termination of the vendor's Sales Representative authorization.

Pacific will notify all multi-line business customers of the Sales Agency Program through bill inserts. The large business customers will receive a letter from the Pacific account teams describing the Sales Agency Program. Pacific believes that customers will react favorably to this proposed service because it will provide more purchasing options to the customer. The customer can request network services from other than Pacific Bell and receive total systems, network services and CPE, from the Sales Representative.

Pacific served copies of A.L. 15472 on all CPE vendors and manufactures doing business in California.

The Sales Agency program was designed to serve the small customer with 20 to 200 lines. Pacific targeted this group as one that is difficult for it to serve. Higher commissions are possible upon sale of smaller Centrex systems. Pacific relied upon preliminary market studies undertaken by Eastern Management Group, which in turn incorporated an informal study prepared by Pacific Telesis, to develop the commission levels for the Sales Agency program.

PROTEST

The California Teleconnect Association (CTA) and the North America Telecommunications Association (NATA) filed their protest on November 18, 1988. CTA is a state association of distributors and retailers of customer premises equipment (CPE). NATA is a national trade association of manufacturers, distributors and retailers of CPE and communications systems.

Their protest states that the Network Services Marketing Agreement as tariffed destroys the flexibility needed between Pacific Bell and its Sales Agents. Having the agreement tariffed means that any minor changes in the agreement would require an advice letter filing with an effective date 40 days after the advice filing. The agreement should be struck from Pacific's tariffs.

NATA and CTA also protested that the planned phased development of the sales agency will require frequent recourse to the "tariff process with its 40-day comment period followed by Commission review." Even minor changes would required 30-day prior notice. This will impede the development and expansion of the program, they assert.

NATA and CTA present arguments on many other points, including:

1. The tariffed ordering procedures are inconsistent and deviate from standard Centralized Operations Group procedures in current use (1).

1. Under established COG procedures, an independent CPE vendor may submit a blanket agency letter to the COG. The blanket agency letter states that the vendor will only submit orders for network

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2. The tariff provides for premature termination of the program.
3. The program stultifies the business dealings between Pacific Bell and its independent agents and is out of step with the Commission's movement to a less intrusive regulatory approach.
4. The tariff process for sales agency is unnecessary, inappropriate, and contrary to the California Public Utilities Code.

DISCUSSION

It is this Commission's intent to have the sales agency program as a tariffed offering. This will provide protection to both the ratepayers and the sales agents. A plain language reading of Public Utilities Code Section 489 encompasses the Commission's ability to tariff contracts such as those involved in Sales Agency.

The Advice letter procedure, as set forth in G.O. 96-A, allows for public notice of a tariff change, a 20 protest period, and 5 day period for utility response and Commission review. This allows interested parties the opportunity to review the appropriateness and impact of the tariff. We will concede that a 30 day written notice for minor changes may be longer than necessary. To help the Sales Agency Program develop more expeditiously, we will direct Pacific to supplement its advice letter filing to provide 10- day written notice for minor changes.

NATA and CTA protested the addition of what they describe as burdensome procedures in that the sales agent must submit a letter, signed by the customer, to Pacific prior to placing an

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services on behalf of customers who have authorized the vendor to place such orders on their behalf. The blanket agency letter remains on file with the COG. After a vendor sells a CPE system to a customer and if the customer requests that the vendor order certain network services for the customer, the vendor places the order with the COG either by telephone or facsimile. Subsequent communication between the telephone company and the independent vendor regarding availability of services, the installation due date and any changes to the order are also generally handled by telephone.

order on behalf of the customer for network services. They point out that this is not required now when a CPE vendor places orders on behalf of its customers. A blanket letter of agency on file with COG is sufficient. This procedure has been in place for seven years. Furthermore, NATA and CTA protest that the signed authorization letter prior to installation will create an additional step for sales agents, and will delay their customers' service. This is not a requirement in Pacific's own marketing procedures and hence unfair.

We believe that the time tested COG procedure has worked well. The customer is protected by the requirement for a blanket letter of agency on file with the CCG. Therefore we will direct Pacific to remove the requirement of a signed authorization letter prior to installation of services. However, we will retain the confirmation letter which the sales agent is to send both the customer and Pacific Bell. This will be a further safeguard to the customer.

The protestants have expressed concern that the Sales Agency tariff may be subject to premature termination since it is being established on a provisional basis. Our reasons for the provisional tariff are discussed below. However, this does not mean we have reservations about the program, but rather we have concerns about the level of the commissions and the cost of the program to Pacific and ratepayers. In this provisional offering we will require Pacific to provide evidence of the cost effectiveness of the program before we give final consent to any commission rates.

Finally, NATA and CTA suggest that the Commission's policies hinder and intrude on the business dealings between Pacific and its sales agents. We must point out to NATA and CTA that it is our responsibility under state law to protect the ratepayers of California. Furthermore our procedures have been established over many years to provide opportunity for participation by interested parties in our proceedings and to allow our review into the fairness and appropriateness of utility practices. While we are investigating alternative regulatory frameworks, we must continue to function under those that are in place. Therefore, with the exception of reducing the advance written notice for minor changes in the sales agency program from 30 days to 10 days, and the elimination of the signed letter in advance of network service installation, we reject the joint protest of CTA and NATA.

In developing the Sales Agency program, Pacific relied on demand and costs estimates based on forecasts. Pacific may not have accurately predicted the costs and revenues of this offering. It is a concern of this Commission that the costs of Sales Agency Program not exceed the expense which Pacific would incur if it

marketed each service itself. Pacific estimated the ratio of revenues to costs for Centrex in its last rate case at 1.0. This means that any costs for Sales Agency which exceed Pacific's own marketing expense (e.g. marketing expense, commercial expense, advertising expense) would result in a revenue to cost ratio of less than 1.0. Therefore, we shall reserve judgment on the permanent approval of this service and shall authorize a provisional offering to test the commission structure and to substantiate the cost, revenues and profitability of this program.

FINDINGS

1. Pacific filed A.L. 15472 on October 31, 1988 requesting authorization for Sales Agency Program and the Network Marketing Agreement.
2. Sales agents (sales representatives) will receive commission payments that are 8-16 $\frac{1}{2}$ of the recurring first year revenues from Centrex and Comstar II for new or additions to services sold through the sales agency program.
3. Inclusion of additional products and services in the sales agency program, renewal of the program, and changes in pricing terms or conditions for sales commissions are subject to CPUC approval through the advice letter process.
4. To develop the program expeditiously, Pacific should notify the Commission in writing 10 days (not 30 days) before it makes minor changes in the program, such as change in geographical areas in which sales agents may operate, changes within the approved range of commission payments, and contract duration.
5. Customers will be adequately protected by the usual COG procedures and order confirmation letter. The requirement for a letter of authorization presented to Pacific prior to the installation of network services is not necessary.
6. The commission levels, demand, and costs which are used to support Pacific's proposal are based on informal studies, estimates or forecasts.
7. It is possible that Pacific did not accurately predict the cost, revenues or profitability of the program.
8. This program should be offered as a two-year provisional program so that Pacific may document costs and demands for the program, and demonstrate that sales agency can sell Pacific's services at least as inexpensively as Pacific can.

9. Addition of new services to the Sales Agency Program, changes in pricing terms and conditions for sales commissions are subject to CPUC approval.

IT IS ORDERED that:

1. Prior to the effective date of this tariff, Pacific shall file a supplemental advice letter to remove the requirement that a signed letter of authorization by the sales representative's customer be presented to Pacific prior to installation of network services. The supplemental advice letter will also reflect the 10 day advance notice period in ordering paragraph 3 of this resolution.
2. Pacific is authorized to offer its Sales Agency Program on a two-year provisional basis.
3. Pacific shall request changes to the Sales Agency program using the advice letter procedures set forth in G.O. 96-A; However, to help develop the program expeditiously, minor changes such as changes in geographical areas in which sales agents may operate, changes within the approved range of commission payments, and contract duration, may be made by informing the Commission in writing 10 days prior to the change.
4. Pacific shall monitor the results of its Sales Agency Program and file a report every three months with the Telecommunications Branch of the Commission Advisory and Compliance Division until the end of the trial. The report shall include volume, total sales generated under the sales agency program, total sales commissions paid and specific sales commission levels paid to each authorized sales representative.
5. One year from the effective date of this resolution Pacific will report the results of its study (using accepted work measurement methods) of its own costs to sell Centrex and Commstar II systems. This report will include the number of sales personnel in Centrex and Commstar II sales, the average amount of time each spent selling Centrex and Commstar II, and the volume of sales.
6. If the above reports indicate that the costs of the program are greater than Pacific's cost of selling the same products, Pacific will file a tariff proposal to revise commission rates accordingly within 14 months of the effective date of this resolution.

7. The appropriate tariff sheets in Schedule Cal. P.U.C. No. A1, Preliminary Statement; A2, Regulations; A5, Exchange Services; and A9, Central Office Services, shall be marked to show that such sheets were authorized by Resolution T-13032.
8. The effective date of this Resolution is today

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on November 23, 1988. The following Commissioners approved it:

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



Executive Director