PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION
TELECOMMUNICATIONS BRANCH

RESOLUTION T-14174
October 12, 1990

RESOLUTION

RESOLUTION T-14174. REQUEST BY PACIFIC BELL FOR PROVISIONAL AUTHORITY TO FILE ADVICE LETTERS TO WAIVE OR DISCOUNT SPECIFIC TARIFFED CHARGES DURING A PROMOTIONAL PERIOD.

BY ADVICE LETTER NO. 15782, FILED ON AUGUST 6, 1990.

SUMMARY

This resolution authorizes Pacific Bell (Pacific) to file advice letters with the California Public Utilities Commission (CPUC) to specify optional services that will be offered during a promotional period with waived or discounted tariffed non-recurring charges. The services promoted will be those that result from new or upgraded utility serving facilities or statewide offerings of new or existing optional services. Any promotion must be offered to all classes of customers to whom the promoted service is available. A promotion cannot be provided in tandem with market trials or technology tests. Each promotional period will not exceed 120 days.

Authorization is provisional and will expire two years after the effective date of this resolution, unless cancelled, changed or extended.

Pacific must file any additional tariff revisions required to fulfill the conditions set forth in this resolution prior to Advice Letter No. 15782 or any specific promotional offering made pursuant to the authority granted herein becoming effective. Only when all such conditions are met, may Advice Letter No. 15782 become effective, and any promotion-specific advice letter derive authority therefrom.

BACKGROUND

Currently, when Pacific offers a new optional service the subscriber is charged the full tariffed rates and charges and is not allowed to subscribe to the service on a reduced-cost trial basis. Section X of General Order 96-A requires utilities to "first obtain the authorization of the Commission to carry out the terms of" "any contract or deviation for the furnishing of any public utility service at rates or under conditions other than the rates and conditions contained in its tariff schedules on file and in effect at the time".

In Advice Letter No. 15782 filed on August 6, 1990, Pacific requests authorization to introduce a provisional tariff allowing it to offer selected network and exchange optional services at waived or reduced non-recurring tariff charges. Pacific proposes the following terms and conditions:

1. "The provisional period for this offering will be two (2) years from the effective date of the first authorized service promotion."

2. "The services promoted will be those that result from new or upgraded central office capability and for introduction on statewide offerings with new or existing optional services. These services will be proposed in subsequent advice letter filings which will require Commission resolution."

3. "The promotion duration shall not exceed 120 days per offering, with at least thirty (30) day memorandum notification to the California Public Utilities Commission. The memorandum notification shall include:

   "- customer selection
   "- service selection
   "- non-recurring charges
   "- promotional area
   "- duration
   "- customer notification plan" (Proposed Schedule A5 Sheet 1074.1)

4. "The promotional pricing of services shall be subject to and offered only where facilities and operating conditions permit." (Proposed Schedule A5 Sheet 1074.2)

5. "The promotional offering shall be limited to serving central offices designated by the Utility." (Id.)

6. "The method of customer notification of the promotional offering shall be at the option of the Utility." (Id.)

7. "Customers may cancel the promotional offering at any time during or at the conclusion of the promotional period without penalty. Minimum billing as set forth in A2.1.9 is applicable to a promotional offering." (Id.)

8. "Customer notification of the retention of services subscribed to during the promotional period is required as set forth in Schedule Cal.P.U.C. No. A2.1.12." (Id.)

The promotional offering of Pacific's services is not a new concept. Pacific filed Advice Letter No. 13432 on November 30, 1979, to offer services on a trial basis. In Resolution No. T-10171, dated December 18, 1979, Pacific was granted authority to promote Custom Calling features (call waiting, call forwarding, etc.) in the Sonoma Exchange during a 90-day promotional period. In considering Pacific's advice letter proposal prior to the filing of Advice Letter No. 15782, the CACD requested that all information related to the implementation of Advice Letter No. 13432 be made available for review. Pacific was unable to provide the requested information. Further, Pacific chose to file Advice Letter No. 15782 without closure of the CACD's informal review of the advice letter proposal.

On August 6, 1990, Pacific also filed Advice Letter No. 15783 to allow it to offer promotional pricing for Commstar Custom Calling Services, pursuant to the authority requested in Advice Letter No. 15782, again without the CACD's informal review of the advice letter proposal. In Advice Letter No. 15783, Pacific proposes the following terms and conditions:

1. "By this filing, Pacific establishes promotional pricing for residence and business Commstar Custom Calling Services."

2. "Two types of promotions will be offered from September through December, 1990. The first offering will be to residence customers whose serving central office will become Commstar Custom Calling Services capable for the first time from September through December, 1990. Promotional offerings for <u>each</u> central office cutover will be for a maximum period of 60 days. The second offering will be to residence customers statewide, primarily those who do not currently subscribe to any Commstar Custom Calling Services. This offering will be for a maximum period of 60 days."

3. "A thirty day memorandum notification will be submitted to the California Public Utilities Commission for all subsequent offerings and will include: customer selection, service selection, nonrecurring charges, promotional area, duration and customer notification plans." (I.e., per Advice Letter No. 15782.)

4. "Customers will be able to order any or all of the following Commstar Custom Calling Services: Call Waiting, Three-Way Calling, Speed Calling 8, Call Forwarding, Busy Call Forwarding, Delayed Call Forwarding, Busy Call Forwarding-Extended, Busy and Delayed Call Forwarding, Intercom Plus, Speed Calling 30 and/or Direct Connection. During the promotional period that will begin on October 15, 1990 and end on December 15, 1990 (subject to CPUC approval), customers participating in the promotional offerings may subscribe to selected features with applicable nonrecurring charges waived." (None of these specifics are included in the tariff sheets attached to Advice Letter No. 15783.)

In Advice Letter No. 15783, Pacific estimates that the net incremental revenue for the two specified Commstar promotions will be $3,305,800.

<u>PROTESTS</u>

API Alarm Systems (API) filed a timely protest of Advice Letter No. 15782 on August 24, 1990, contending that it is too open-ended in not specifying the services for which charges may be reduced or waived, and thus may improperly shift the risk of failure for certain of Pacific's allegedly competitive offerings to the ratepayers. API wants the identity of the specific services to be promoted and the full cost support included in the advice letter. As information, API also timely protested Advice Letter No. 15783 (the Commstar promotions) on August 24, 1990, similarly concerned that this advice letter "improperly proposes to load the risk of failure of its category 2 offerings upon the backs of ratepayers who would otherwise participate in shareable earnings at the end of 1992." API alleges that Pacific has failed to demonstrate that its proposal will not reduce shareable earnings due to the ratepayers.

On August 30, 1990, Pacific responded to the API protests that Advice Letter No. 15782 is a generic filing which does not change any pricing, but creates the opportunity for Pacific to file advice letters for specific promotions so as to keep Pacific competitive. To itemize the specific services to be promoted would defeat the purpose of this generic filing.

Pacific projects a revenue increase from the promotional offerings and posits that the design of the promotions will enhance the potential for profit-sharing with the ratepayers. Pacific argues that the new regulatory framework does not require Pacific to be 100% accurate with their revenue projections, but requires Pacific to act more effectively in a competitive environment. Pacific points out that ratepayers do not bear the risk of failure in this offering. The rates are controlled by the price index formula, which is not affected by the success or failure of revenue stimulation programs. However, the ratepayers will benefit if the promotional offering is successful.

DISCUSSION

A. The Terms of Commission Authorization

Advice Letter No. 15782 proposes to establish a Commission-authorized (as required by G.O. 96-A, Section X) platform from which specific promotional offerings may spring. In Advice Letter No. 15782, Pacific confuses this straightforward process by proposing that the services to be promoted "will be proposed in subsequent advice letter filings which will require Commission Resolution" and that yet another layer will be added with a "thirty (30) day memorandum notification" to the CPUC for each specific promotional offering. This elaborate scheme is unnecessary; once the Commission authorizes and adopts a Promotional Pricing program by resolution (i.e., via Advice Letter No. 15782), no further Commission resolutions should be required for promotional offerings which meet the terms and conditions of that authorization. Such subsequent filings can be made as advice letters which will go into effect on regular notice without a Commission resolution.

Pacific also complicates its proposal by suggesting that the Commission's provisional authority terminate two years from the effective date of the first promotion. This requires more tracking of dates than is necessary and departs from the standard use of the authorizing resolution's effective date as the "trigger" for the duration of provisional tariffs, as well as for most compliance requirements.

B. Definition of Legitimate Services/Offerings

Public Utilities (P.U.) Code Section 453 (c) prohibits public utilities from "establish(ing) or maintain(ing) any unreasonable difference as to rates, charges, services, facilities, or in any other respect, either as between localities or as between classes of service." In order to satisfy this statute, promotional offerings should be available to all customers using equivalent services and facilities, regardless of class or locale. Therefore, promotional offerings (reduced or waived nonrecurring charges) are appropriate when offered to all customers or when a service is newly available, either throughout the utility's intrastate service territory or due to the upgrade of the utility's serving facilities. It is not appropriate to offer promotional rates only to residential customers, as Pacific proposes in Advice Letter No. 15783 for two Commstar promotional offerings, since Commstar Custom Calling Services are available to business customers as well.

Market trials and technology tests should continue to require separate evaluation and authorization as currently required, since by definition they are conducted prior to services being made available throughout the utility's service territory and already constitute a "deviation" from the utility's tariff.

In considering whether a "service" is appropriate for promotion, we should consider the definition of "new service" which we adopted in D.87-07-017 and D.88-12-091, and are currently considering for final resolution in A.89-03-046 for AT&T Communications of California, Inc. Therein, we have agreed with AT&T's definition of a new service as "an offering which customers perceive as a new service and which has a combination of technology, access, features or functions that distinguishes it from any existing services." (D.88-12-091 at p. 53) We adopted this definition with the qualifier that "repricing or repackaging of an existing service would not be considered a new service" and observed that "the definition does not classify an optional calling plan which discounts existing service as a new service." (Id. at pp. 53-54)

C. Additional Terms and Conditions Needed

In discussions with the CACD, Pacific has agreed to additional terms and conditions essential for Commission authorization of a "foundation" Promotional Pricing Program:

1. During the "subscription" phase of each promotion, the subscriber will be fully informed of all the terms and conditions of the promotional offering, and Pacific will contact the subscriber regarding the retention or discontinuance of the service prior to the end of the promotional period. This contact will inform the subscriber that if they wish to retain the promoted service, they need do nothing; and if they wish to discontinue it, they need to call their Business Office to do so. Samples of the notification materials will be provided to the CACD when proposing the promotion.

2. A post-implementation analysis on each promotion undertaken by Pacific will include customer response to the promotion and the impact of the promotional scheme on the profitability of the promoted service as a whole, as well as actual revenues and expenses. All customer complaints or concerns will be identified and included in the analysis, which will be submitted to the Commission Advisory and Compliance Division (CACD) within 60 days of the ending date of each promotion and receive CACD approval before the next promotion commences.

D. Compliance with D.89-10-031, "New Regulatory Framework"

Advice Letter No. 15782 does not propose a new service or change rates for existing services. It raises the conceptual question, however, about whether the waiver or discount of optional service non-recurring charges could result in the "anticompetitive price squeeze" we sought to prevent in adopting certain safeguards in D.89-10-031 (including imputation of tariffed monopoly building block rates and non-monopoly costs), the new regulatory framework for Pacific and GTE California, Inc (GTEC). This is a factor which Pacific (and GTEC if it follows a similar course) will have to consider and thoroughly address in its advice letters to implement specific promotional offerings pursuant to the overall framework established herein. Since we have one such advice letter pending (No. 15783), we have an opportunity for a practical consideration of this question and thereby, guidance for subsequent advice letters.

In considering Advice Letter No. 15783 in the context of D.89-10-031, we must ensure that Pacific will not engage in any "anticompetitive conduct" against other firms by waiving the installation charges for Commstar features during the limited promotional period. Although Commstar features were included in Category II (discretionary and partially competitive services), there are currently no directly competitive offerings by other regulated telephone companies. However, competition for Commstar features does exist in the form of terminal equipment (e.g., answering machines and speed dialing equipment) and private branch exchange (PBX) equipment. The waiver or discount of a very small ($5-$25) nonrecurring installation charge cannot be viewed as a serious challenge to these competitors since the only customers who can take advantage of the offer are those who already have Pacific's service. While this waiver is not likely to be significant enough to effect customer choice between equipment vendors and Pacific's services, it will provide a nominal benefit to Pacific customers who would like to try out Commstar features.

There is potential for anticompetitive conduct on Pacific's part if it discriminates against actual or potential competitors in not extending comparable pricing to its own equivalent wholesale services such as, in the case of Commstar features, its proposed Basic Services Elements for enhanced services providers (A.90-08-069). If Pacific discriminates in charging its retail customers less than its wholesale customers of equivalent services, that will be cause for alarm on our part and we will take steps to resolve the inequity.

E. API's Protest

API requests that Pacific identify the services to be promoted in Advice Letter No. 15782. This is unreasonable, for it is not our intention to lock Pacific into specific promotional offerings, but to allow it the flexibility to promote current and future services (e.g., Commstar features) that fit the promotional pricing program.

In its protest of Advice Letter No. 15782, API also requests that full cost support be provided. Pacific has agreed to provide the CACD with a revenue and cost projection for each promotion. The proposed promotion must satisfy the CACD's concerns, which include cost justification, before Pacific is given approval to promote the service. The post-implementation analysis which we will require Pacific to perform will also provide a sufficient means to monitor the effect of this provisional tariff.

F. Conclusion

Authorizing the promotional pricing of optional services will allow customers the benefit of making an informed decision based on personal use of the service. In addition, Pacific anticipates a stimulation in the usage of optional services after the promotional period. It is expected that revenues thereby generated will provide a contribution to earnings, which pursuant to D.89-10-031, will be shared with ratepayers should all shareable earnings exceed Pacific's "benchmark" rate of return set at 13.00%. In addition to the safeguards Pacific has proposed, we will require additional terms and conditions to avoid discriminatory treatment and mitigate any negative impact on subscribers or the general ratepayers. We also note that Pacific is at risk if such revenues do not materialize as rates cannot generally be increased to cover lost revenues under D.89-10-031.

The CACD recommends authorization of a provisional tariff because Pacific cannot accurately predict the cost, revenue and profitability of the promotional offerings. The provisional tariff allows the Commission to reserve judgement on permanent approval of the promotional pricing program so that Pacific can convince the Commission that promotional offerings are economical. The recommended provisional tariff should expire two years after the effective date of this resolution unless cancelled, changed or extended.

Each promotion-specific advice letter should include the following elements:

1. The overall criteria for waiving or discounting the non-recurring charge during the promotional program and the financial impacts on the entire service to reflect the revenue required to recover the cost of the promotion.

2. The start and end dates of the promotion(s).

3. The program for customer notification/participation.

4. Samples of the notification materials.

5. Any limitations or safeguards.

6. The tracking (post-implementation analysis) plan.

Advice letters which comply with the conditions enumerated in this Discussion, and to be reflected in Advice Letter No. 15782 and its accompanying tariff sheets, should become effective on regular notice. Pacific has agreed to supplement Advice Letters No. 15782 and 15783 to reflect the additional and changed conditions herein. Neither Advice Letter should become effective until these supplements are filed and our terms and conditions of authorization satisfied.

FINDINGS

1. Section X of General Order 96-A requires utilities to obtain authorization of the Commission to carry out any deviation from the rates and conditions contained in their tariff schedules.

2. Advice Letter No. 15782 is generic and designed to provide the foundation for promotional offerings of optional services which result from new utility serving facility technology or statewide offerings of new or existing optional services.

3. In Resolution No. T-10171, dated December 18, 1979, Pacific was granted authority to promote Custom Calling features in the Sonoma Exchange during a 90-day promotional period. The CACD requested information to evaluate the implementation of this promotion, but Pacific was unable to provide it.

4. Advice Letter No. 15783 was filed concurrently with Advice Letter No. 15782 to allow Pacific to offer promotional pricing for Commstar Custom Calling Services, pursuant to the authority requested in Advice Letter No. 15782.

5. API Alarm Systems (API) filed a timely protest of Advice Letter No. 15782 on August 24, 1990. API concurrently (and timely) protested Advice Letter No. 15783 (the Commstar promotions). On August 30, 1990, Pacific responded to the API protests.

6. Once the Commission authorizes and adopts a Promotional Pricing program by resolution (i.e., via Advice Letter No. 15782), no further Commission resolutions should be required for promotional offerings which meet the terms and conditions of that authorization. Such subsequent filings can be made as advice letters which will go into effect on regular notice without a Commission resolution.

7. The authorizing resolution's effective date is the standard "trigger" for the duration of provisional tariffs, as well as for most compliance requirements.

8. In order to satisfy P.U. Code Section 453 (c), promotional offerings should be available to all customers using equivalent services and facilities, regardless of class or locale.

9. Therefore, promotional offerings (reduced or waived nonrecurring charges) are appropriate when offered to all customers or when a service is newly available, either throughout the utility's intrastate service territory or due to the upgrade of the utility's serving facilities.

10. It is not appropriate to offer promotional rates only to residential customers, as proposed in Advice Letter No. 15783 for two Commstar promotional offerings, since Commstar Custom Calling Services are available to business customers as well.

11. Market trials and technology tests should continue to require separate evaluation and authorization as currently required, and should not be included in the Promotional Program.

12. In considering whether a "service" is appropriate for promotion, we should consider the definition of "new service" we adopted in D.87-07-017 and D.88-12-091, and are currently considering for final resolution in A.89-03-046 for AT&T Communications of California, Inc.

13. We adopted this definition with the qualifier that "repricing or repackaging of an existing service would not be considered a new service" and observed that "the definition does not classify an optional calling plan which discounts existing service as a new service." (Id. at pp. 53-54)

14. Additional terms and conditions essential for Commission authorization of a "foundation" Promotional Pricing Program are:

a. During the "subscription" phase of each promotion, the subscriber will be fully informed of all the terms and conditions of the promotional offering, and Pacific will contact the subscriber regarding the retention or discontinuance of the service prior to the end of the promotional period. This contact will inform the subscriber that if they wish to retain the promoted service, they need do nothing; and if they wish to discontinue it, they need to call their Business Office to do so. Samples of the notification materials will be provided to the CACD when proposing the promotion.

b. A post-implementation analysis on each promotion undertaken by Pacific will include customer response to the promotion and the impact of the promotional scheme on the profitability of the promoted service as a whole, as well as actual revenues and expenses. All customer complaints or concerns will be identified and included in the analysis, which will be submitted to the Commission Advisory and Compliance Division (CACD) within 60 days of the ending date of each promotion and receive CACD approval before the next promotion commences.

15. Advice Letter No. 15782 raises the conceptual question of whether the waiver or discount of optional service non-recurring charges could result in the "anticompetitive price squeeze" we sought to prevent in adopting certain safeguards in D.89-10-031 (including imputation of tariffed monopoly building block rates and non-monopoly costs), the new regulatory framework for Pacific and GTE California, Inc (GTEC).

16. The potential for anticompetitive conduct resulting from promotional offerings is a factor which Pacific (and GTEC if it follows a similar course) will have to thoroughly address in its advice letters to implement specific promotional offerings pursuant to the overall framework established herein.

17. Advice Letter No. 15783 provides an opportunity for practical consideration of this question and thereby, guidance for subsequent advice letters.

18. Competition for Commstar features largely exists in the form of PBX and terminal equipment; the waiver or discount of a very small ($5-$25) nonrecurring installation charge cannot be viewed as a serious challenge to those competitors since the only customers who can take advantage of the offer are those who already have Pacific's service.

19. There is potential for anticompetitive conduct on Pacific's part if it discriminates against actual or potential competitors in not extending comparable pricing to its own equivalent wholesale services such as, in the case of Commstar features, its proposed Basic Services Elements for enhanced services providers (A.90-08-069).

20. If Pacific discriminates in charging its retail customers less than its wholesale customers of equivalent services, that will be cause for alarm on our part and we will take steps to resolve the inequity.

21. API's request that Pacific identify the services to be promoted in Advice Letter No. 15782 is unreasonable.

22. API's concerns about the costs and profitability of promotions should be mitigated by the revenue and cost projections and post-implementation analysis which we will require Pacific to submit to the CACD for each promotion.

23. Authorizing the promotional pricing of optional services will allow customers the benefit of making an informed decision based on personal use of the service.

24. Pacific anticipates a stimulation in the usage of optional services after the promotion period which will generate contribution to basic service.

25. Pacific is at risk if such revenues do not materialize as rates cannot generally be increased to cover lost revenues under D.89-10-031.

26. The CACD recommends authorization of a provisional tariff because Pacific cannot accurately predict the cost, revenue and profitability of the promotional offerings. The provisional tariff should expire two years after the effective date of this resolution unless cancelled, changed or extended by Commission order.

27. Each promotion-specific advice letter should include the following elements:

a. The overall criteria for waiving or discounting the non-recurring charge during the promotional program and the financial impacts on the entire service to reflect the revenue required to recover the cost of the promotion.

b. The start and end dates of the promotion(s).

c. The program for customer notification/participation.

d. Samples of the notification materials.

e. Any limitations or safeguards.

f. The tracking (post-implementation analysis) plan.

g. The potential for anticompetitive conduct resulting from the promotional offerings, as prohibited in D.89-10-031.

28. Advice letters which comply with the conditions enumerated in these Findings, and to be reflected in Advice Letter No. 15782 and its accompanying tariff sheets, should become effective on regular notice.

29. Neither Advice Letter No. 15782 nor 15783 should become effective until supplements are filed and our terms and conditions of authorization satisfied.

THEREFORE, IT IS ORDERED that:

1. Pacific Bell shall supplement Advice Letters No. 15782 and 15783 to reflect the additional and changed conditions imposed herein within 30 days of this resolution's effective date. If these supplements are not filed and our terms and conditions of authorization satisfied by this date, the authority granted herein will expire.

2. Pacific Bell's request in Advice Letter No. 15782 for provisional authority to offer selected network and exchange optional services at waived or reduced tariff charges is granted, conditional upon compliance with Ordering Paragraph No. 1. This authority will expire two years from the effective date of this resolution unless cancelled, changed or extended by Commission order.

3. Pacific Bell is only authorized to promote specific optional services which result from upgraded serving facilities, or statewide offerings of new or existing optional services.

4. Pacific Bell shall file advice letters for specific optional services' inclusion in Schedule Cal. P.U.C. A5 to become eligible for promotional pricing. Such advice letters shall include the elements specified in Finding 27.

5. Advice Letter No. 15782 and the accompanying tariff sheets shall be marked to show that they were authorized by Resolution T-14174, with the effective date to be set in accordance with Ordering Paragraph No. 1.

6. The effective date of this Resolution is today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 12, 1990. The following Commissioners approved it:

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Neal J. Shulman

NEAL J. SHULMAN
Executive Director