

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION
Telecommunications BranchRESOLUTION NO. T-14223
November 21, 1990R E S O L U T I O N

RESOLUTION T-14223. PACIFIC BELL. REQUEST TO ESTABLISH SALES AGENCY AS A PERMANENTLY TARIFFED PROGRAM AND TO REMOVE PRODUCT-SPECIFIC REFERENCES AND COMPENSATION LEVELS FROM THE TARIFFS.

BY ADVICE LETTER NO. 15822, FILED OCTOBER 5, 1990.

SUMMARY

This resolution authorizes Pacific Bell (Pacific) to offer the Sales Agency Program on a permanent, rather than provisional, tariffed basis. Based on the operation of this program during the initial two-year provisional tariff period, the following changes are ordered:

1. Pacific's request to delete references to the Sales Agency Program from its tariff schedule for each network service marketed through the program is granted. However, the services marketed through the Sales Agency Program must continue to be listed in Schedule A2 with the relevant sample marketing agreement form(s), and this list of participating services must be clearly indexed in the Table of Contents for ease of reference.
2. Pacific's request to delete references to the specific compensation levels received by authorized sales agents from its tariff schedule is granted. However, the commission paid by Pacific to sales representatives may not exceed 50% of the annual recurring revenue for the service sold, nor may the commission paid by Pacific to sales agents exceed Pacific's own costs to sell the service. Pacific shall annually report to the CACD on the Sales Agency Program commission levels by service, comparing them with the relevant recurring revenues and Pacific's own costs to sell the service. This report shall cover the calendar year and shall be due by March 1 of each year.
3. All changes to Pacific's tariff schedules will be made by advice letter on regular notice.

Pacific must file any additional tariff revisions required to fulfill the conditions set forth in this resolution prior to

Advice Letter No. 15822 or any specific offering made pursuant to the authority granted herein becoming effective. Only when all such conditions are met, as determined by the Commission Advisory and Compliance Division (CACD) within one full business day of filing, may Advice Letter No. 15822 become effective, and any program-specific offering derive authority therefrom.

BACKGROUND

Pacific introduced its Sales Agency Program on October 31, 1988, by Advice Letter No. 15472. The Sales Agency Program met a Federal Communications Commission competition safeguard requirement, ordered in its Docket 86-79. Resolution T-13032 authorized the program on a provisional basis and accepted the Network Services Marketing Agreement. The program allows 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 and Exchange Services at the rates and charges and within the regulations as set forth in Pacific's tariffs. Although the authorized sales agent sells the network services, Pacific has the total responsibility for installing, maintaining, and billing the tariffed network services.

Resolution T-13032 set commission levels of 8 to 16% of annual recurring revenues for the initial offering of Centrex lines and Commstar features. Resolution T-14159 authorized 4 other services which offered commission rates up to 42% of annual recurring revenues for those offerings. Pacific pays the commission within 30 days of the sale; however, if the service does not remain in place for at least 6 months, 100% of the commission is debited from future commissions.

Resolution T-13032 set the following conditions:

"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 ten days in advance of such changes."

The current and continuing Network Services Marketing 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 results in termination of the vendor's Sales Representative authorization.

The California Teleconnect Association (CTA) and the North America Telecommunications Association (NATA) protested the advice letter introducing the Program because they believed that tariffing Sales Agency would destroy the flexibility needed between Pacific Bell and its sales agents. However, Resolution T-13032 said:

"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."

In Advice Letter No. 15822, filed on October 5, 1990, Pacific requests that all changes to the Program, including the addition of tariffed network services in the Program, be handled from now on by ten-day written notice to the Commission. It also requests that it be permitted to delete references to the Program in the tariff schedule for each participating service as well as specific commission levels paid to authorized sales agents from its tariff completely.

PROTESTS

On October 25, 1990, the CACD received a timely protest from Telephone Repair and Installation Co. of Orange County (TRICOC). TRICOC alleges that Pacific's Sales Agency Program violates D.86-05-072 (the Cease and Desist Order regarding marketing abuses by Pacific). TRICOC's concerns are the "cold selling" telemarketing technique, sales quotas or goals and commissions paid to the sales agent, and the access to Pacific's traffic studies provided to sales agents but withheld from competitors. TRICOC is further concerned that the Program "diminish(es) the adversarial relationship between competitors" and thereby reduces effective opposition to Pacific's regulatory proposals which might enhance its market power. TRICOC cites the likelihood that sales agents would be "targets of acquisition by Pacific Bell should the regulatory environment change." Finally, TRICOC believes that granting Pacific authority to bypass the advice letter process and delete product-specific references and commission levels from its tariff "would further reduce customer and competitive entities input to the regulatory process." TRICOC requests hearings be held before the provisional tariff is made permanent and that all interested parties have an opportunity to protest the provisional tariff's impact and discuss proposed changes.

Pacific received a copy of this protest on November 2, 1990, from the CACD and its response was received by the CACD on November 5, 1990. Pacific first requests that TRICOC's protest be rejected due to its failure to service a copy of it upon Pacific, as required by General Order 96-A, Section III.H. Pacific then addresses TRICOC's allegations and concerns:

1. In D.90-02-043, the Commission lifted the telemarketing and sales quota restrictions of D.88-05-072 (Ordering Paragraph No. 3). Further, the Sales Agency Program was approved by the Commission in November (sic) 1988, while the

restrictions were still in effect. Pacific believes that the Commission would not have approved the Program if it violated D.88-05-072.

2. Pacific disputes TRICOC's argument that it is coopting opposition and competition through the Program by pointing out that there are currently 40 sales agents, ranging in size from two to 100 employees, and that there is nothing in the marketing agreement which prevents sales agents from participating, or taking a position contrary to Pacific's, in any regulatory proceeding. Pacific denies that there is any evidence that it intends to acquire CPE vendors.

3. Pacific asserts that the changes it has requested to the Program will not "dilute the ability of customers and competitors to participate in the regulatory process," citing the Commission's informal and formal complaint processes as alternative avenues to the advice letter process.

4. Pacific points out that interested parties were given 20 days to protest this advice letter, pursuant to G.O. 96-A, and that no additional period for protests is warranted.

DISCUSSION

The Sales Agency program is Pacific's response to meet the requirements of the Federal Communications Commission (FCC). Pacific has opened the sales and marketing of its products to CPE vendors. In return, the FCC allows Pacific to undertake joint marketing of CPE with CPE vendors. Pacific has notified the Commission of such agreements with AT&T and several other equipment vendors.

Resolution T-13032 lays out the guidelines for the program. However, it approved the offering on a provisional basis because information supporting the commission levels was lacking. Pacific was required to track commission payments and demonstrate that its commission rates were not higher than its own costs to sell the same products. Subsequently (in Resolution T-14159), the Commission approved commission levels that are less than the expected recurring revenues from the minimum service period (or no more than 50% of annual recurring revenues). This protects the ratepayers because commissions will not exceed the revenues received if service sold by sales agents is abandoned, even at the minimum period. Further, we will retain our original standard in Resolution T-13032 that commission payments should not exceed Pacific's own costs for selling the same service, and require Pacific to annually report on these three factors (commission levels, recurring revenues and internal selling costs) in lieu of tariffing the specific commission levels. As Pacific has noted in its reply to TRICOC's protest, all the Commission's standard enforcement mechanisms are available to reconcile any departure from these conditions on commission levels, even though they are not tariffed. In the interest of fairness, Pacific must provide commission rate information to prospective sales agents and in the Network Services Marketing Agreement it enters into with each sales agent.

Pacific's desire to limit the details of the sales agency program to the part of the tariff containing the network marketing agreement, (Schedule CAL PUC NO. A2, General Regulations, 2.3 Forms) should not pose a problem. Exhibit C of the Network Services Marketing Agreement lists all the network services available through the Sales Agency program, and the unit on which the commission is paid.

While the Commission responded to the protests of the original Sales Agency advice letter that set up the program by establishing the ten-day written notice procedure for changes that are minor in nature, experience during the provisional period indicates that this exception to the G.O. 96-A process was infrequently used and administratively cumbersome due to its exceptional nature. Given our consideration of these issues in T-13032, our experience during the provisional period and the concerns regarding customer and competitor input raised by TRICOC in its protest, we conclude that no exceptions to the standard procedure for filing revisions to Pacific's tariff schedules (i.e., G.O. 96-A) are warranted.

Finally, as Pacific has noted, the cease and desist order cited by TRICOC as being in conflict with the Sales Agency Program has been lifted. The Commission has specified the conditions under which Pacific may conduct its marketing efforts, and has reviewed the Sales Agency Program carefully to ensure its soundness in this regard. Pacific is obligated to comply with all Commission orders and rules as well as state law in all of its activities.

FINDINGS

1. Resolution T-13032 authorized the Sales Agency Program on a provisional basis and accepted the Network Services Marketing Agreement.
2. Advice Letter No. 15822, filed on October 5, 1990, requests permanent status for the Sales Agency Program and that all changes to the Program, including the addition of tariffed network services in the Program, be handled from now on by ten-day written notice to the Commission. It also requests permission to delete references to the Program in the tariff schedule for each participating service as well as specific commission levels paid to authorized sales agents from its tariff completely.
3. On October 25, 1990, the CACD received a timely protest from Telephone Repair and Installation Co. of Orange County (TRICOC).
4. Pacific received a copy of this protest on November 2, 1990, from the CACD, and its response was received by the CACD on November 5, 1990.
5. The program was authorized as a provisional tariff because cost data was not available to support commission levels. This information has been provided. The program should be permanent.
6. To protect ratepayers from commission rates that could exceed revenues received through sales agent sales, commissions must be limited to no more than 50% of the recurring first year revenues.

Further, we will retain our original standard that commission payments should not exceed Pacific's own costs for selling the same service, and require Pacific to annually report on these three factors (commission levels, recurring revenues and internal selling costs) in lieu of tariffing the specific commission levels. All of the Commission's standard enforcement mechanisms are available to reconcile any departure from these conditions on commission levels, even though they are not tariffed. In the interest of fairness, Pacific must provide commission rate information to prospective sales agents and in the Network Services Marketing Agreement it enters into with each sales agent.

7. Exhibit C of the Network Services Marketing Agreement lists all the network services available through the Sales Agency program, and the unit on which the commission is paid.

8. The ten-day notice exception to the G.O. 96-A process was infrequently used and administratively cumbersome due to its exceptional nature. Given our consideration of these issues in T-13032, our experience during the provisional period and the concerns regarding customer and competitor input raised by TRICOC in its protest, we conclude that no exceptions to the standard procedure for filing revisions to Pacific's tariff schedules (i.e., G.O. 96-A) are warranted.

9. The cease and desist order cited by TRICOC as being in conflict with the Sales Agency Program has been lifted. The Commission has specified the conditions under which Pacific may conduct its marketing efforts, and has reviewed the Sales Agency Program carefully to ensure its soundness in this regard. Pacific is obligated to comply with all Commission orders and rules as well as state law in all of its activities.

Therefore, IT IS ORDERED that:

1. Pacific Bell shall supplement Advice Letter No. 15822 to reflect the additional and changed conditions imposed herein within 30 days of this resolution's effective date. Only when all such conditions are met, as determined by the Commission Advisory and Compliance Division (CACD) within one full business day of filing, may Advice Letter No. 15822 become effective, and any program-specific offering derive authority therefrom. Otherwise, the authority granted herein will expire.
2. Pacific Bell's request in Advice Letter No. 15822 for permanent authority to offer selected network and exchange optional services through the Sales Agency Program is granted, conditional upon compliance with Ordering Paragraph No. 1. Based on the operation of this program during the initial two-year provisional tariff period, the following changes are ordered:
 - A. Pacific's request to delete references to the Sales Agency Program from its tariff schedule for each network service marketed through the program is

granted. However, the services marketed through the Sales Agency Program must continue to be listed in Schedule A2 with the relevant sample marketing agreement form(s), and this list of participating services must be clearly indexed in the Table of Contents for ease of reference.

B. Pacific's request to delete references to the specific compensation levels received by authorized sales agents from its tariff schedule is granted. However, the commission paid by Pacific to sales representatives may not exceed 50% of the annual recurring revenue for the service sold, nor may the commission paid by Pacific to sales agents exceed Pacific's own costs to sell the service. Pacific shall annually report to the CACD on the Sales Agency Program commission levels by service, comparing them with the relevant recurring revenues and Pacific's own costs to sell the service. This report shall cover the calendar year and shall be due by March 1 of each year. Pacific must provide commission rate information to prospective sales agents and in the Network Services Marketing Agreement it enters into with each sales agent.

C. All changes to Pacific's tariff schedules will be made by advice letter on regular notice.

3. Advice Letter No. 15822 and the accompanying tariff sheets shall be marked to show that they were authorized by Resolution T-14223, with the effective date to be set in accordance with Ordering Paragraph No. 1.
4. 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 November 21, 1990. The following Commissioners approved it:

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

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.


NEAL J. SHULMAN
Executive Director