

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION RESOLUTION T-14556
Telecommunications Branch September 6, 1991

R E S O L U T I O N

RESOLUTION T-14556. REQUEST OF AT&T COMMUNICATIONS OF CALIFORNIA, INC. TO DEVIATE FROM GENERAL ORDER 96-A SECTION X AND TO CONDUCT MARKET TRIALS AT RATES OR UNDER CONDITIONS DIFFERENT FROM THOSE CURRENTLY EFFECTIVE IN AT&T-C'S TARIFFS. AT&T-C HAS ALSO REQUESTED A CERTAIN SET OF GUIDELINES BE APPLIED TO CONDUCTING THESE MARKET TRIALS.

BY ADVICE LETTER NO. 212, FILED ON JUNE 25, 1991;
SUPPLEMENT NO. 212A, FILED ON JULY 15, 1991;
SUPPLEMENT NO. 212B, FILED ON JULY 26, 1991.

SUMMARY

This resolution authorizes AT&T Communications of California, Inc. (AT&T-C) Advice Letter 212, filed on June 25, 1991, in which AT&T-C requests to deviate from General Order 96-A Section X, in that it would conduct market trials at rates or under conditions different from those currently in effect in its existing tariffs.

The specific conditions under which AT&T-C would conduct market trials are partly set forth in its recommended Guidelines, which are also a part of this advice letter. Additional restrictions are ordered in this resolution. Supplement 212A postponed the effective date of the Advice Letter to August 8, 1991, and Supplement 212B restricted the offering of each market trial to one year's duration.

BACKGROUND

Currently, AT&T-C offers services only at the existing tariffed rate and to all qualified customers who request the service in the area where it is offered. This practice does not allow AT&T-C the opportunity to estimate the potential demand for a new service in a service area such as California before it commits to offering the service to that area. The purpose of market trials is to estimate that demand more accurately and so more responsively serve customer needs.

September 6, 1991

PROTESTS

Notice of this advice letter was published in the Commission Calendar on June 27, 1991.

Four protests have been received by the Commission Advisory and Compliance Division (CACD) from MCI, US Sprint, Caltel (California Association of Long Distance Telephone Companies, Inc.), and Pacific Bell. The questions raised in these protests are (1) whether the conditions of the market trials result in anticompetitive practices; (2) whether other utilities may perform similar market trials; and (3) whether it is appropriate to use the advice letter process to institute market trial procedures.

DISCUSSION

AT&T-C proposes the following Guidelines for Conducting Market Trials:

*1. Initial authorization for AT&T Communications of California, Inc. (AT&T-C) to conduct market trials using end user participants requires California Public Utilities Commission (Commission) approval via a resolution for a blanket deviation. The process for implementing market trials following such authorization will be for AT&T-C to submit a market trial description to the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division (CACD) for the CACD's information and review. The market trial description will be considered AT&T-C proprietary information and will be treated as confidential under General Order 66-C.

*2. During the CACD's review AT&T-C may be requested to clarify information stated in the market trial description. Those requests will be forwarded to AT&T-C's State Government Affairs manager responsible for submitting the market trial description.

*3. The Assistant Director of the Telecommunications Investigation and Research Branch of the Division of Ratepayer Advocates (DRA) will be notified when a market trial is in progress. This notification will be considered AT&T-C proprietary information and will be treated as confidential under General Order 66-C.

*4. Routine testing to upgrade the network and research and development activities require no CACD notification when end users are not knowingly and actively participating. However, if the trial represents a significant technological breakthrough and poses the potential for significant customer impact, AT&T-C will provide the CACD with an advisory FYI (for your information) letter. The FYI letter will be considered AT&T-C proprietary information and will be treated as confidential under General Order 66-C.

September 6, 1991

"5. After establishing its market trial objectives, AT&T-C will determine and limit sufficiently the duration, geographic scope, and number of participants in the market trial to achieve its market trial objectives. Market trials may be less than, but will not exceed, 12 months in duration.

"6. In either oral or written notification to end user participants describing the market trial, AT&T-C will make the participants aware of the time bounds of the market trial, and that the market trial can be withdrawn at any time during the duration of the market trial. Such notification will also indicate that participation in the market trial is entirely voluntary and revocable under terms of the agreement between AT&T-C and the participants, and will include all of the prices, if any, applicable to the services provided under the market trial.

"7. A market trial will be terminated under any of the following conditions:

- a. The market trial objectives are met before the planned termination of the market trial;
- b. AT&T-C concludes that the market trial is not successful.

"8. Employees may be included in market trials if appropriate. Other end user participants may be included in trials when they add value beyond that of employees. Examples of their added value include situations where:

- a. A significant amount of traffic is necessary to test capacity;
- b. employee participants' biases and tolerance levels could skew results; or where,
- c. employee participants do not fit the test criteria.

"9. Executive summaries highlighting the results will be provided to the Chief of the Telecommunications Branch of CACD at the conclusion of market trials. These summaries will be considered AT&T-C proprietary information and will be treated as confidential under General Order 66-C.

"10. Definition of Terms

MARKET TRIALS - The trialing of services, features, applications or service options that provide potential customer benefit in a limited marketplace to determine end user willingness to pay, end user demand, and various service provisioning processes.

END USER PARTICIPANTS - The individuals or groups for whom a potential service offering is intended. This category includes residential customers, businesses,

September 6, 1991

employees at their homes, local exchange carriers, interexchange carriers, and enhanced service providers who knowingly and actively participate in a market trial or who experience an obvious change in service as a result of the market trial.

BLANKET DEVIATION - A one-time authorization issued by a Resolution by the Commission providing AT&T-C with the authority to conduct market trials under the guidelines set forth in the Guidelines for Conducting Marketing Trials. The authorization will require that a specific market trial description be submitted for CACD review when a market trial is conducted using end user participants.

FYI (FOR YOUR INFORMATION) LETTER - When testing to upgrade the network or when research and development activities represent a significant technological breakthrough and pose the potential for significant customer impact, AT&T-C will provide the CACD with an advisory FYI letter. This FYI letter will briefly detail the nature of the testing.

MARKET TRIAL DESCRIPTION - A package submitted to CACD including the following elements:

- a. Market Trial Description Letter, which provides the name of the market trial, the location of the market trial, the market trial dates, the estimated number of participants, and a description of the activity undertaken.
- b. Inquiry Response Information, including any generic information that may be disclosed by the CACD in the event of inquiries from the public."

Four timely protests have been received by the Commission Advisory and Compliance Division (CACD). The questions raised in those protests are (1) whether the conditions of the market trials result in anticompetitive practices; (2) whether other utilities may perform similar market trials; and (3) whether it is appropriate to use the advice letter process to institute market trial procedures.

AT&T-C has stated (and should include in revised Guidelines) that it prefers to offer a market trial within one of the following service categories:

1. 800 services;
2. 900 services;
3. other inbound services;
4. outbound services;
5. message telecommunication service (MTS);
6. private line services;
7. other residential services.

September 6, 1991

CACD agrees that, without some safeguards added to AT&T-C's original advice letter, there is a potential for anticompetitive practices in AT&T-C's market trials. The following additions should minimize the potential for anticompetitive practices:

1. The number of customers put on a market trial should be limited to no more than 5% of the Residential Class and 15% of the market for the service being trialed within the Business Class.
2. When two market trials are run back-to-back with hand-picked customers, the same customers should not be allowed to participate in both trials (except when those customers are employees of AT&T-C). If customers are chosen randomly for market trials, AT&T-C need not exclude previously involved customers. Sampling procedures for each market trial should be fully disclosed in the pre-trial proposal to be sent to CACD and DRA.
3. When customers on a market trial in the Business Class are hand-picked, AT&T-C should use the following technique to ensure that it does not discriminate among customers in that class: It should identify the top 10% of the Business Class customers eligible for the service being tested (as determined by the revenue to AT&T-C they produce on the service) and ensure that no more than 15% of that top 10% are included in the market trial. When customers are randomly chosen or signed up on a first-come-first-served basis, this technique need not be used.
4. No market trial will last longer than one year. AT&T-C has already agreed to this stipulation and filed it as Supplement 212B.
5. AT&T-C should be required to file its pre-trial proposal to CACD and DRA at least 30 days in advance of the trial's beginning. (DRA has the same rights of access to information as CACD, and it can keep proprietary information under G.O. 66-C in the same way as CACD.) This will allow sufficient time for review and the calendaring of a resolution rejecting the market trial, if something unacceptable is found in the proposal.
6. AT&T-C should be required to establish detailed subaccounts on market trial costs. If at a later date CACD and DRA need to review those costs for any reason, they should be available and accurate. Any additional procedures for verification of AT&T-C's market trial practices should be established by agreement between AT&T-C and CACD Telecommunications Branch.

CACD believes that other utilities can also file for market trial authority under the current rules. This authority is important to Pacific Bell, which filed a limited protest over the fact that its current market trial authority is more restrictive than what AT&T-C's advice letter proposes. The authority of others to mimic AT&T-C's filing satisfies Pacific.

September 6, 1991

Three of the protestants argue that AT&T-C has not sufficiently defined the scope of and conditions for market trails. By failing to do so, it may (1) unfairly gain greater market dominance; (2) offer services at less than cost (to be recollected in other rates); and (3) rebundle services unfairly to capture new customers or retain those who appear ready to transfer from AT&T-C. CACD believes that these problems are adequately addressed in its recommended restrictions, but the protestants argue that the appropriate place to evaluate these problems and establish safeguards is in evidentiary hearings.

The Division of Ratepayer Advocates (DRA) had the opportunity to protest this advice letter on the grounds outlined above and recommend that market trails be considered in A. 90-07-015, but it did not protest. CACD recommends that the advice letter be approved with the safeguards that it has added.

FINDINGS

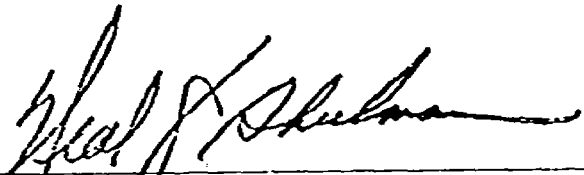
1. AT&T-C's request to perform market trials as a deviation from General Order 96-A Section X is reasonable.
2. Competing and adjacent utilities were noticed of this advice letter and are given the opportunity to file for the same practice; therefore, there is no competitive advantage given to AT&T-C.
3. It is appropriate to determine the Guidelines for Market Trials through the advice letter process. It is unnecessary to move it either to AT&T-C's A.90-07-015 or to a separate application.
4. Both CACD and DRA will be informed of each proposed market trial before it begins. Our two Divisions' review should be sufficient to protect both ratepayers and competitors from any unacceptable practices.
4. The Guidelines presented in the Discussion section above (together with CACD's additional restrictions on the market trials) provide an adequate framework of protections for both ratepayers and competitors. They should be adopted.

September 6, 1991

THEREFORE, IT IS ORDERED that:

1. AT&T-C's request to deviate from General Order 96-A Section X when it conducts market trials for services in California is granted.
2. AT&T's request to conduct these market trials according to the Guidelines For Market Trials (set forth in the Discussion section above) is also granted, with the additions recommended by the CACD.
3. AT&T-C shall file a Supplement to Advice Letter 212, which includes the restrictions on market trials proposed by CACD in modified Guidelines within 30 days of this resolution's effective date.
3. The tariff sheets accompanying AT&T-C's Advice Letter No. 212, filed on June 25, 1991, shall be marked to show this Resolution's number and effective date.
4. This resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on September 6, 1991. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

I abstain.

G. MITCHELL WILK
Commissioner

PATRICIA M. ECKERT
President
JOHN B. CHANIAN
DANIEL WM. FESSLER
NORMAN D. SHUMWAY
Commissioners