

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
COMMISSION ADVISORY & COMPLIANCE DIVISION RESOLUTION T-14922
Telecommunications Branch May 20, 1992

R E S O L U T I O N

RESOLUTION T-14922. PACIFIC BELL. REQUEST TO ALLOW PACIFIC BELL SALES AGENCY REPRESENTATIVES TO SELL PACIFIC'S SERVICES UNDER A CUSTOMER SPECIFIC CONTRACT.

BY ADVICE LETTER NO. 16195, FILED MARCH 2, 1992.

SUMMARY

Pacific Bell (Pacific), by Advice Letter No. 16195, filed on March 2, 1992, and Supplements A & B, requests authority under provisions of General Order No. 96-A (G.O. 96-A) to revise Schedule Cal. P.U.C. No. A2.1.1, Rule No. 1 - DEFINITION OF TERMS. This revision allows Pacific's Authorized Sales Representatives (ASRs) to sell Pacific's services under contract on a commissioned basis.

Marin Telemanagement Corporation (MTC) filed a protest to Advice Letter No. 16195 on March 17, 1992. Pacific filed its response to the protest of MTC on March 23, 1992. MTC's protest is denied.

This Resolution authorizes Pacific to revise Tariff Schedule No. A2.1.1 as requested.

BACKGROUND

The Sales Agency Program was approved as a permanent offering by the Commission in Resolution No. T-14223 on November 21, 1990. The Sales Agency Program allows Pacific's ASRs (CPE vendor) to market, on a commission basis, within geographical areas designated by Pacific, Network and Exchange services at rates, charges and regulations as set forth in Pacific's tariff schedules.

At this time, ASRs sell only tariffed network services under approved tariff rates, charges and regulations for those services. Advice Letter No. 16195, and Supplements A & B, request that the Commission authorize the previously mentioned revision to allow ASRs to sell services under the G.O. 96-A contract process as well.

NOTICE

Pacific has mailed a copy of the Advice Letter and related tariff sheets to competing and adjacent Utilities and/or other Utilities, and interested parties, and to all existing ASRs as requested. Advice Letter No. 16195 was listed in the Commission's Daily Calendar of March 4, 1992.

PROTESTS

MTC filed a protest to Advice Letter No. 16195 on March 17, 1992. MTC's reasons for requesting that the Commission reject Advice Letter No. 16195 are summarized below:

- o Pacific's ASRs should be considered switchless resellers under D.91-10-041 and required to obtain a Certificate of Public Convenience and Necessity (CPCN) before they commence operations in this State.
- o Pacific's ASRs should be subject to the Commission's decisions concerning holding out and incidental traffic rules governing intraLATA competition.

Pacific in its response stated:

- o Decision No. 91-10-041 relates to non-dominant interexchange carriers (IECs). These companies sell interLATA transport services in California under their own name and pursuant to their own tariffs. If they purchase services from another carrier and are billed by the underlying carrier, repackage such services under their own product name, and sell such services pursuant to the own tariffs, they are resellers. If the resellers have no switching facilities of their own, they are switchless resellers.

ASRs do not purchase transmission services from another carrier and resell those services under their own names pursuant to their own tariffs. They act as Pacific's representatives to sell Pacific's services under Pacific's name. Customers who purchase such services know they are purchasing Pacific's services, are provided such services by Pacific, and are billed by Pacific. The ASRs simply act as a selling agent for Pacific's services.

- o The holding out rules were established to prevent IECs (including resellers) authorized to provide interLATA service in California from unlawfully providing intraLATA service. Those rules have no relation to the sales of Pacific's services, either by Pacific or by ASRs.

DISCUSSION

Pacific's ASRs are now authorized to market Pacific's tariffed services for compensation. Under the proposed Advice Letter revision, the ASRs would be authorized to deviate from filed tariff schedules in order to sell Pacific's services under a

customer specific contract (The process and requirements for filing advice letters to request authorization of customer specific contracts are applicable).

MTC cites D.91-10-041 for the proposition that "any individual or firm that markets Intrastate long distance services within California is considered a 'Switchless Reseller' and subject to PUC regulation as a public utility," and concludes that Pacific's ASRs sell Pacific's services and should be considered switchless resellers.

The Commission in D.91-10-041(page 8), in distinguishing between switchless resellers and agents stated:

"Switchless resellers are also distinguishable from 'agents' which merely market the underlying carrier's service to customers under the underlying carrier's name pursuant to the underlying carrier's tariffs and/or, in some instances, act as the underlying carrier's billing agent. By contrast, a switchless reseller is a certified carrier providing service under its own name and in accordance with its own tariffed rates."

We conclude that Pacific's ASRs are agents of Pacific and do not require the Commission's regulation as public utilities. MTC's protest to Advice Letter No. 16195 is without merit and is denied. Advice Letter No. 16195, as supplemented, is approved.

FINDINGS

1. Pacific Bell filed Advice Letter No. 16195 and its supplements requesting Commission authority to revise Schedule Cal. P.U.C. No. A2 to allow Pacific's Sales Agency Program Authorized Sales Representatives to sell Pacific's services under contract.
2. Pacific's ASRs are agents of Pacific.
3. MTC's protest to Advice Letter No. 16195 is without merit.

May 20, 1992

THEREFORE, IT IS ORDERED that:

1. Authority is granted to make Advice Letter No. 16195, as supplemented, and the corresponding tariff sheets effective on May 21, 1992.
2. The Advice Letter tariff sheets authorized herein shall be marked to show that such sheets were authorized by Resolution of the Public Utilities Commission of the State of California No. T-14922.
3. MTC's protest to Advice Letter No. 16195 is denied.

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 May 20, 1992. The following Commissioners approved it:



NEAL J. SHULMAN
EXECUTIVE DIRECTOR

DANIEL Wm. FESSLER
President
JOHN B. O'BANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.