

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
COMMISSION ADVISORY AND COMPLIANCE DIVISION RESOLUTION T-15037
TELECOMMUNICATIONS BRANCH September 2, 1992

R E S O L U T I O N

RESOLUTION T-15037. FOR MCCAW CELLULAR COMMUNICATIONS
INC.-AFFILIATED CELLULAR RADIOTELEPHONE UTILITIES:

VENTURA CELLULAR TELEPHONE COMPANY (U-3010-C),
STOCKTON CELLULAR TELEPHONE COMPANY (U-3012-C),
SACRAMENTO CELLULAR TELEPHONE COMPANY (U-3013-C),
FRESNO CELLULAR TELEPHONE COMPANY (U-3014-C),
SANTA BARBARA CELLULAR SYSTEMS (U-3015-C),
NAPA CELLULAR TELEPHONE COMPANY (U-3016-C),
SALINAS CELLULAR TELEPHONE COMPANY (U-3018-C),
REDDING CELLULAR PARTNERSHIP (U-3020-C),
CAGAL CELLULAR COMMUNICATIONS CORP. (U-3021-C),

REQUEST OF CELLULAR RADIOTELEPHONE UTILITIES TO DEVIATE
FROM GENERAL ORDER 96-A TO CONDUCT MARKET TRIALS AT
RATES, TERMS, AND CONDITIONS DIFFERENT FROM THEIR
TARIFFS USING COMMISSION APPROVED GUIDELINES.

BY ADVICE LETTER NOS. 47 (U-3010-C), 60 (U-3012-C), 89
(U-3013-C), 55 (U-3014-C), 49 (U-3015-C), 53 (U-3016-C),
41 (U-3018-C), 30 (U-3020-C), 45 (U-3021-C), FILED ON
JUNE 22, 1992.

SUMMARY

This Resolution authorizes the Advice Letters (A.L.) filed by the affiliated cellular companies of McCaw Communications Inc. (McCaw), shown above, to become effective on the date that each respective cellular radiotelephone company files a supplement to its advice letter reflecting changes ordered in this Resolution. These advice letters request blanket authority to deviate from General Order (G.O.) 96-A to conduct market trials at rates, terms, and conditions different from existing tariffs. Approval of this deviation is conditioned upon strict adherence to the Guidelines for Conducting Technology Tests and Market Trials (Guidelines) contained in this Resolution. This Resolution also provides blanket authority to other cellular telephone utilities to deviate from G.O. 96-A to conduct market trials contingent upon their filing tariffs containing the Guidelines in this Resolution.

One protest was received from Cellular Resellers Association, Inc. (CRA) on July 13, 1992.

BACKGROUND

General Order 96-A states that Commission authorization must be obtained before any utility may furnish service at rates or under conditions other than those that are contained in effective tariff schedules, including new, nontariffed services. Requests may be made by formal application, or if of minor importance or temporary in nature, by an advice letter filing.

With increasing competition in the telecommunications marketplace, the need for telecommunications utilities to quickly evaluate the marketability of new services to ensure new sources of revenue, meet customer service needs, and remain competitive has become evident. The current requirements of G.O. 96-A would necessitate a telecommunications utility to immediately tariff a new service without a market trial, increasing the risks that the new service might not be profitable or meet the needs of the utility's customers. The McCaw-affiliated cellular utilities have requested authorization to conduct market trials without complying with G.O. 96-A, but subject to specified guidelines. If market trials are to be permitted, the Commission must review such market trial proposals for feasibility and for potential benefit or detriment to the utility's customers.

The proposed guidelines submitted in the above advice letters by each cellular radiotelephone company are as follows; ("Company" denotes a cellular radiotelephone company):

1. The Company shall submit a Market Trial Description to the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division (CACD) 30 days in advance of the beginning of the trial for CACD's information and review. The market trial description will be considered Company proprietary information and will be treated as confidential under General Order No. 66-C. The Market Trial Description and subsequent modifications to the Description require CACD approval. CACD may express its approval by (i) written notification to the Company; (ii) oral notification to the Company; or (iii) by taking no action on the submitted Market Trial Description or modification, as discussed in paragraph 2 below.

2. Once the Company has filed the Market Trial Description or modification to the Description, CACD will have 10 business days to notify the person designated by the Company at the time the Company submits its Market Trial Description, in writing or orally, of any questions it may have regarding the market trial. The purpose of the 10 day notice is to provide CACD a mechanism by which it may discuss issues raised by the market trial before the Company begins such market trial. If, however, CACD does not notify the Company of any questions regarding the market trial within the above-mentioned 10 business days, the market trial will be deemed to have been approved, and CACD will not prevent the Company from going forward with its market trial.

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3. The Company will comply with the final decision (pending) in I.88-11-040 regarding the requirements of the Uniform System of Accounts.

4. The Company will also file a copy of its pretrial proposal at least 30 days in advance of the beginning of the trial with the Assistant Director of the Telecommunications Investigation and Research Branch of the Division of Ratepayer Advocates (DRA). This notification will be considered Company proprietary information and will be treated as confidential under General Order No. 66-C.

5. 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, the Company will provide CACD with an advisory FYI (for your information) letter. The FYI letter will be considered Company proprietary information and will be treated as confidential under General Order No. 66-C.

6. After establishing its market trial objectives, the Company will determine and limit sufficiently the duration and number of participants, and may limit the geographic scope in the market trial to achieve its market trial objectives. Market trials may be less than, but will not exceed, 12 months in duration.

a. The number of customers put on a market trial will be limited to no more than 15% of the customers of the Company.

b. When two market trials are run back-to-back with hand-picked customers, the same customers will not be allowed to participate in both trials (except when those customers are employees of the Company). If customers are chosen randomly for market trials, the Company need not exclude previously involved customers. Sampling procedures for each market trial will be fully disclosed in the pretrial proposal to be sent to CACD and DRA.

c. When customers on a market trial are hand-picked from a class of customers, the Company will use the following technique to ensure that it does not discriminate among customers in that class: It will identify the top 10% of the customer class eligible for the service being tested (as determined by the revenue to the Company 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.

7. By written notification, the Company will make the market trial 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 the terms of the agreement between the Company and the participants, and will include all of the prices, if any, applicable to the services provided under the market trial.

8. 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. The Company concludes that the market trial is not successful.

9. The Company may, as a result of a market trial, decide to offer the service tested in a market trial to all of the Company's customers on a tariffed basis. In the event the Company chooses to offer the service on a tariffed basis, the Company will request Commission approval through the advice letter process. While the Commission reviews such an advice letter, the Company may request an extension of the market trial so that the service provided to the market trial participants will not be interrupted. To receive an extension, the Company will submit a written request to CACD at least 10 business days prior to the end of the market trial period. The notice should indicate that the Company intends to file an advice letter seeking to amend its tariff in order to add the service tested in the market trial. Unless CACD contacts the Company prior to the end of the trial, requests for extensions will automatically become effective to avoid service disruptions to the market trial participants. Extensions can run from the end of the trial to the point in time where the Commission either accepts or rejects the Company's advice letter. If the Company desires to amend its tariff to add the service or services tested, it shall file an advice letter with the appropriate tariff pages within 20 business days after the date the Market Trial for the service tested is scheduled to terminate.

10. 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 meet the test criteria.

11. 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 Company proprietary information and will be treated as confidential under General Order No. 66-C.

12. 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 retail customers, wholesale customers, and volume user customers who knowingly and actively participate in a market

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trial or who experience an obvious change in service as a result of the market trial.

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, the Company 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.

PROTESTS

Notices of the A.L.s were published in the Commission's Daily Calendar on July 1, 1992. The A.L.s, filed June 22, 1992, were also distributed to the All Cellular Service List.

A protest was received from Cellular Resellers Association, Inc. on July 13, 1992 averring that the A.L. guidelines as submitted were not stringent enough to protect resellers or consumers from possible anti-competitive behavior by the cellular radiotelephone utilities. The details of the protest are as follows:

- (1) No prior approval of market trials by CACD is required.
- (2) No definition is given for the subject(s) of the market trials. CRA requests that market trials be limited to new services.
- (3) CRA requests that the market trials be limited by geographic area and that the maximum percentage of (randomly-selected) customers be reduced from 15% to 5%.
- (4) CRA considers a market trial period of 1 year to be excessive and believes that a 3 month market trial period is long enough.
- (5) CRA requests that the market trial approval process include a reseller comment period.
- (6) CRA requests that resellers' customers be included in the market trials.

McCaw's response to CRA's protest was delayed and submitted July 29, 1992. The response addresses the protest details as follows:

- (1) There are three methods by which CACD can express its approval or disapproval of the market trials before the beginning of a trial.
- (2) Similarly to AT&T and Pacific Bell, McCaw, which is in a much more competitive environment, should not be limited solely to new services in its market trials, but should be permitted, for example, to try new rate plans.
- (3) McCaw's geographic area is already limited. Furthermore, limitation to less than 15% of McCaw's customer base

would not be consistent with the 15% allowance for AT&T and Pacific Bell.

(4) A 3 month limitation is too stringent, particularly as the Commission has previously determined that a 12 month limitation is adequate to preclude anticompetitive activity.

(5) McCaw's retail operations and CRA's reseller operations are actually competitive activities. CRA's participation in the market trial design could be construed as plagiarization or as anticompetitive.

(6) It is inappropriate for resellers customers to be included in McCaw's market trials. Resellers are free to conduct their own market trials.

DISCUSSION

The Commission recognizes that telecommunications utilities need to quickly implement market trials in a competitive environment. Accordingly, the Commission authorized AT&T in Resolution T-14556, dated September 6, 1991, to deviate from the Commission approval requirements of G.O. 96-A, contingent on following the Commission's approved guidelines. Streamlining of the market trial process reduces the costs and risks of product failure to the utility and aids in bringing services that meet the needs of its customers to the market place with minimal delay.

Subsequently in Resolution T-14944, dated June 17, 1992, the Commission carefully defined the guidelines for Pacific Bell to conduct market trials. The present resolution is a logical extension of the Pacific Bell guidelines to the market trials of cellular radiotelephone companies.

It is reasonable that other cellular radiotelephone companies desiring to conduct market trials follow identical guidelines to those set forth in this Resolution. The Commission therefore will allow blanket authority to other cellular utilities who file tariffs containing these guidelines.

The following modifications have been made to paragraphs 1, 2 and 12 of the guidelines submitted by the utilities (new text is underlined and deleted text is lined through). These changes are required for clarification and to preclude a delay in processing to be considered as a tacit approval:

1. The Company shall submit a Market Trial Description or a Proposed Modification to a market trial to the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division (CACD) 30 days in advance of the beginning of the trial for CACD's information and review. The market trial description will be considered Company proprietary information and will be treated as confidential under General Order No. 66-C. The Market Trial Description and subsequent modifications to the description require CACD approval before the market trials or changes may be implemented. Market trials offering promotional rates and or benefits for existing tariff services will be categorically disapproved. CACD may express its approval or non-approval by (i) written notification to the Company; or (ii) oral notification to the Company, with a later follow-up written

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confirmation, approving the submitted Market Trial Description or modification, as discussed in paragraph 2 below.
~~or (iii) by taking no action on the submitted Market Trial Description or modification.~~

2. Once the Company has filed the Market Trial Description or modification to the description, CACD will have 10 business days to notify the person designated by the Company at the time the Company submits its Market Trial Description, in writing or orally, of any questions it may have regarding the market trial. The purpose of the 10 day notice is to provide CACD a mechanism by which it may discuss issues raised by the market trial before the Company begins such market trial. CACD's non-issuance of written or oral approval, for any reason, will suspend implementation of the market plan. ~~If, however, CACD does not within the above mentioned 10 business days, the market trial will be deemed to have been approved, and CACD will not prevent the Company from going forward with its market trial.~~

12. Definition of Terms

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, the Company will provide the CACD with an advisory FYI letter. This FYI letter will briefly detail the nature of the testing. Routine testing to upgrade the network and research and development activities require no CACD notification when end users are not knowingly and actively participating.

The following comments, using the guidelines as modified in this Resolution, address CRA's protest as well as McCaw's response:

(1) Explicit CACD prior approval of market trials is required.

(2) Regarding market trial subject definition, promotional rates or benefits for existing tariff services are categorically excluded. Furthermore all market trial proposals require CACD review and approval. A further limitation of market trial subject definition is not considered necessary, as the market trial is subject to CACD approval.

(3) Market trials with up to a 15% randomly selected customer base do not necessarily constitute an excessive sample. CACD in its review process will analyze sample size, accepting a randomly-selected sample of up to 15% when justified by statistical considerations. When a hand-picked rather than a randomly-selected customer sample is used, the sample size is limited to 1.5% (15% of 10%) of the eligible customer class. A geographic limitation, unless required by the market trial, is undesirable.

(4) The trial period of up to 1 year has been adopted in Resolution T-14944 and may well be necessary to obtain meaningful results. Again the trial period for specific market trials is subject to CACD review and approval.

(5) The implementation of a reseller comment phase is inconsistent with the market trial concept. This change would expand consideration of a market trial proposal to a full tariff proceeding.

(6) In any market trial using a randomly-selected sample (up to 15%) for a selected customer class, the sample population should ideally include the entire class. However, it is not practicable for McCaw to include resellers' customers in its market trials. With a hand-picked sample the sample size would be limited to 1.5% of the eligible customer class, and there should be no valid objection. To preclude anticompetitive behavior, McCaw's market trials must be limited to current or newly-recruited retail customers who have not had cellular service with another service provider 90 days prior to the submission of the market trial proposal to CACD. Market trials should not be designed to siphon off other cellular service provider's customers, and such customers should not be included in McCaw's market trials. Furthermore, resellers are free to conduct their own market trials with their current or newly-recruited customers. Other classes than retail customers, viz. bulk users and resellers, are not excluded from market trials.

FINDINGS

1. Cellular radiotelephone companies need to be able to quickly try out new services to evaluate the marketability of those services in a competitive marketplace.
2. The existing market trial notification process under G.O. 96-A does not protect proprietary information from cellular radiotelephone companies' competitors.
3. G.O. 96-A does not allow expeditious processing of trial requests.
4. Cellular radiotelephone companies' requests to perform market trials as a deviation from G.O. 96-A are reasonable.
5. The initial requests of cellular radiotelephone companies to establish procedures to deviate from G.O. 96-A for market trials have been made by the McCaw-affiliated cellular utilities. These require a Commission resolution.
6. Having established those procedures however, it is reasonable to authorize other cellular radiotelephone companies to carry out market trials subject to the identical guidelines ordered in this Resolution upon submission of an advice letter with the approved guidelines. Those advice letters do not require a Commission resolution.
7. Both the Commission Advisory and Compliance Division and the Division of Ratepayer Advocates will be informed before each market trial begins. Reviews by both Divisions, using the guidelines approved by the Commission in this Resolution, are sufficient to protect both ratepayers and competitors from any unacceptable practices in market trials.

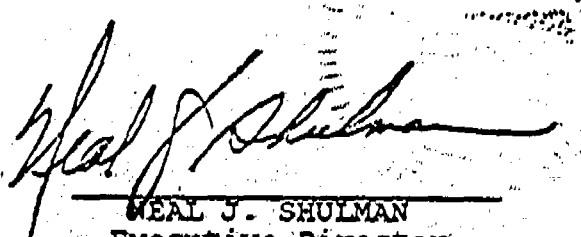
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THEREFORE, IT IS ORDERED that:

1. The request of the McCaw-affiliated cellular radiotelephone companies to deviate from General Order 96-A to conduct market trials is granted.
2. The McCaw-affiliated cellular radiotelephone companies shall file corrected advice letters incorporating the required changes in guideline wording for Paragraphs 1, 2 and 12 above. McCaw-affiliated utilities may submit requests for market trials after filing corrected advice letters and receiving a confirmation letter from CACD that the corrected advice letter is in compliance with this Resolution. This authority to deviate from G.O. 96-A for market trials expires in 60 days from the date of this Resolution unless a corrected advice letter is filed within the 60 days.
3. Proposed modifications to a market trial shall adhere to identical guidelines to those approved herein.
4. Other cellular radiotelephone companies are authorized to file advice letters for market trials proposing identical guidelines to those approved herein. Those other advice letters, adhering to these guidelines, shall become effective on regular notice without requiring additional Commission authorization.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on September 2, 1992. The following Commissioners approved it:


NEAL J. SHULMAN
Executive Director

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

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