

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION      RESOLUTION T-15111  
Telecommunications Branch                                      November 6, 1992

**R E S O L U T I O N**

RESOLUTION T-15111. PACIFIC BELL. REQUEST TO PROVIDE PRIVATE LINE CHANNEL SERVICE UNDER CUSTOMER-SPECIFIC CONTRACTS TO THE CUSTOMERS LISTED BELOW.

<u>COMPANY</u>	<u>ADVICE LETTER NO.</u>	<u>DATE FILED</u>
1. HAWTHORNE COMMUNITY MEDICAL GROUP	16298	8/14/92
2. MISSION PARK MEDICAL	16299	8/14/92

**SUMMARY**

Pacific Bell (Pacific) requests authority under provisions of General Order No. 96-A (G.O. 96-A) and Decision Nos. (D.) 88-09-059 and 91-01-018 to deviate from filed tariff schedules in order to provide dedicated private line channel service to the companies listed above, under customer-specific contracts.

AT&T Communications of California, Inc. (AT&T) and Sprint Communications Company L.P. (Sprint) filed protests to Advice Letter Nos. 16298 and 16299 on September 3, 1992. Pacific filed its response to the protests on September 11, 1992.

AT&T filed a reply to Pacific's response on September 25, 1992. Based on a review of the allegations cited in the protests and Pacific's response to those allegations, we have determined that the protests are without merit and are denied.

This Resolution authorizes Pacific to provide dedicated private line service to the above companies under contract at rates which are discounted from the tariff rates.

**BACKGROUND**

In D.88-09-059 the Commission adopted a modified Phase I Settlement (the Settlement). Under the provisions of the Settlement, the Local Exchange Companies (LECs) are allowed to provide certain services, such as private line service, under the

terms of contracts between LECs and customers. The Settlement provides that such contracts become effective upon authorization by the Commission.

The process and requirements for filing of advice letters to request authorization of customer-specific contracts are set forth in Appendix A of D.88-09-059. Additional specifications for advice letter filings requesting authorization to provide private line service contracts are provided in D.89-10-031, which established the incentive-based "New Regulatory Framework" for Pacific and GTE California (GTEC) and which adopted principles of imputation, unbundling, and nondiscriminatory access.

D.90-04-031 required that special contracts comply with the principles of imputation, unbundling, nondiscriminatory access adopted in D.89-10-031 and that prices for monopoly services be based in their underlying cost structures. Also in D.89-10-031, high speed, digital private line products and services were deemed to be Category II services. Category II services are services which are discretionary or partially competitive and which are granted limited pricing flexibility.

Pacific requests authority to provide dedicated, high capacity, digital private line channel service, commonly known as high capacity digital service (HCDS), or T-1 lines, under contract, to the customers listed below. HCDS (T-1) is suitable for the transmission of digital signals of up to 1.544 megabits per second.

Under the terms of the contracts, Pacific agrees to provide HCDS at the monthly rates and estimated annual revenue impacts listed below. Recurring charges for growth lines are at the contract rate, and nonrecurring charges for growth lines will be at the prevailing tariff rate.

	<u>LINES AT</u> <u>CUTOVER</u>	<u>MONTHLY</u> <u>RATE</u>	<u>TERM</u> <u>(YRS)</u>	<u>REVENUE</u> <u>IMPACT</u>
1. HAWTHORNE COMMUNITY MEDICAL GROUP	10	\$5,312	3	\$-8,559
2. MISSION PARK MEDICAL	4	1,771	5	-6,729

#### NOTICE

Pacific states that a copy of the advice letters and related tariff sheets was mailed to competing and adjacent utilities and/or other utilities and to the customers named in the contracts. The advice letters were listed in the Commission's Daily Calendar of August 19, 1992.

#### PROTESTS

AT&T and Sprint protested Advice Letter Nos. 16298 and 16299, claiming that the advice letters violate the special contracting provisions established for Pacific's high speed, digital private

line service in D.88-09-059. The protestants noted that the Commission, in D.88-09-059, authorized high capacity digital service, but required that the end user-to-CO (central office) link (local loop) of the circuit be excluded from the contract. Specifically, the Commission stated that, "such contracts may be used to deviate from tariffed rates for all elements of high speed digital private line service except for the end user-to-CO link" (emphasis added).

In its response, Pacific acknowledges the exception of the "end user-to-CO link" in the Phase I decision (D.88-09-059) but argues that the Phase II decision (D.89-10-031) supersedes the earlier decision, that the service is highly competitive and many competitors provide the end-user link, and that the Commission has subsequently approved contracts that include the end user-to-CO link.

Pacific makes the following points:

1. In Phase II, D.89-10-031, the Commission classified the entire HCDS circuit as a Category II service with downward pricing flexibility. With regard to flexibly priced services the Commission stated, "Based on uncontradicted evidence presented by GTEC, we conclude that the services for which pricing flexibility was granted in Phase I (for which the rules adopted today replace the pricing flexibility adopted in D.88-09-059), existing information access services, high speed special access services, and billing and collection services are discretionary or partially competitive services and therefore should be placed in Category II with pricing flexibility" [emphasis added].
2. This service has been extremely competitive since intraLATA HCDS was authorized in D.85-12-082. Several Certificates of Public Convenience and Necessary (CPCNs) have been granted to competitors and none of these intraLATA competitors are precluded from providing the end user-to-CO link of their HCDS under contract.
3. Although non-precedential, the Commission has previously authorized Pacific to provide HCDS circuits including the end user-to-CO portion, under contract.

Pacific concludes that its proposed contracts are not discriminatory and do meet the Category II requirements of D.90-04-031, and requests that the Commission deny the protests and allow each contract to become effective as requested.

#### DISCUSSION

Pacific in Advice Letters 16298 and 16299 requests authority to deviate from the tariffed rate for all elements of HCDS (including the end user-to-CO link) in order to provide this service under contract. AT&T and Sprint protested Pacific's Advice Letters 16298 and 16299, stating that the contracts at issue are prohibited according to the special contracting provisions of D.88-09-059.

The Commission in D.88-09-059, defined intraLATA, high speed, digital private line service as the dedicated connection of two or more end user premises within a LATA for the purpose of providing intraLATA, high speed, digital, nonswitched services. In that Decision we said that contracts for HCDS will be permitted only after flexible pricing and intraLATA HCDS competition are authorized in accordance with Section IV of D.88-09-059. We also said that contracts may be used to deviate from tariffed rates for all elements of HCDS except for the end user-to-CO link.

At that time, there were unresolved competitive HCDS contract issues (e.g., the principles of pricing flexibility, unbundling, nondiscriminatory access and imputation). As a result, some short-term guideline decisions were made with the intent of changing them if warranted as the issues were resolved. These issues were resolved or better defined in D.89-10-031.

The provisions of the Settlement (D.88-09-059) which prohibited contract pricing for the HCDS local loop was intended to prevent LECs from practicing discriminatory access by charging its own customers lower rates for the local loop than it charged competitors. In D.89-10-031, in place of the prohibition against contracting for the local loop, we directed LECs to demonstrate that new services comply with the adopted unbundling, nondiscriminatory access, imputation and rate structure principles. Pacific has demonstrated that its proposed HCDS contracts do comply with those principles.

In D.89-10-031 we agreed with the general concept that LECs should have expanded pricing flexibility to respond to market conditions. Toward this end, we adopted three service categories (Category I for fixed-prices services, Category II for flexibly priced services, and Category III for services with maximum pricing flexibility). We placed HCDS in Category II because pricing flexibility would allow LECs to be more responsive to market conditions for these discretionary or partially competitive services. We said, furthermore, that the rules adopted in D.89-10-031 for HCDS replace the pricing flexibility rules adopted in Phase I, D.88-09-059 (see D.89-10-031, page 156).

In placing HCDS in Category II, we made no restrictions for the end user-to-CO link as we had done in D.88-09-059.

In reviewing Pacific's advice letters, we note the following:

- a. The contracts contain the necessary language which conditions their approval upon Commission authorization.
- b. The advice letters and the contracts are public documents.
- c. Pacific has offered the parties to the Phase I Settlement in I.87-11-033 the opportunity to receive and review the workpapers.

and supporting documentation associated with the contracts if such a party first enters into a protective agreement (the Division of Ratepayer Advocates being excepted from this latter requirement).

- d. The contracts provide for the offering of HCDS, which is an appropriate service for provision under a contractual arrangement.
- e. The rates and charges set forth in these contracts cover the direct embedded cost of providing the service offered under the terms of these contracts.
- f. The advice letters indicate that the costs and revenues associated with the contracts will be tracked.
- g. Contracts are required in these cases because the customers require fixed-price contracts that are competitive. Pacific could not meet the customers' requirement under the current tariffs and therefore offered customer specific contracts.

We conclude that the advice letters meet the requirements set forth in the previously mentioned Commission orders and G.O. 96-A, and should be approved. However, we must emphasize that our approval is based on the specifics of these advice letters and the associated contracts, and does not establish a precedent for the contents or for Commission approval of similar requests.

#### FINDINGS

1. Pacific Bell filed Advice Letter Nos. 16298 and 16299 requesting Commission authorization to provide HCDS to the previously mentioned companies under customer-specific contracts.
2. The advice letters and the contracts conform to the requirements of Decision Nos. 88-09-059, 91-01-018, and D.89-10-031; Resolution Nos. T-13069 and T-13091; and G.O. 96-A.
3. Pacific states that authorization of these contracts will result in the previously mentioned estimated annual revenue impacts.
4. Commission authorization of these advice letters and contracts does not establish a precedent for the contents of the filings, or the Commission approval of similar requests. Commission approval is based on the specifics of these contracts.
5. The HCDS guideline adopted in D.89-10-031 supersedes the HCDS contract guideline excluding the end user-to-CO link from HCDS contracts, adopted in D.88-09-059.
6. The concerns of AT&T and Sprint cited in their protests to Advice Letter Nos. 16298 and 16299 are without merit.

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7. The rates, charges, terms and conditions of the contractual services approved in this Resolution are just and reasonable.

THEREFORE, IT IS ORDERED that:

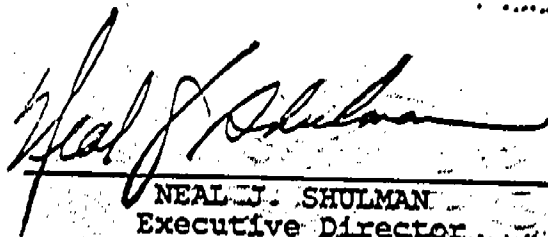
1. Authority is granted to make Advice Letter Nos. 16298 and 16299, the associated tariff sheets, and the Pacific Bell contracts effective on November 7, 1992.

2. The advice letters, tariff sheets and contracts authorized herein shall be marked to show that they were authorized under Resolution of the Public Utilities Commission of the State of California No. T-15111.

3. The protests by AT&T and Sprint to Advice Letter Nos. 16298 and 16299 are 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 November 6, 1992. The following Commissioners approved it:

  
NEAL J. SHULMAN  
Executive Director

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