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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
 COMMISSION ADVISORY AND COMPLIANCE DIVISION RESOLUTION T-15137
 Telecommunications Branch October 6, 1992

R E S O L U T I O N

RESOLUTION T-15137. PACIFIC BELL (U-1001-C). REQUEST TO ESTABLISH BUSINESS ADVANTAGE PLAN, TARIFF SCHEDULE CAL. P.U.C. NO. A6., MESSAGE TELECOMMUNICATIONS SERVICE
 BY ADVICE LETTER 16290A, FILED ON JULY 28, 1992.

SUMMARY

This Resolution rejects Pacific's request to establish Business Advantage Plan (BAP), Tariff Schedule Cal. P.U.C. A6, Message Telecommunications Service. A plan similar to BAP is currently being considered in the the Implementation Rate Design (IRD) proceeding (I.87-11-033, Phase III). The Commission denies Pacific's request on the grounds that approving the plan by way of the advice letter process tends to undermine the procedural integrity of the Commission's formal investigation process by circumventing I. 87-11-033.

BACKGROUND

Pacific Bell (Pacific), by Advice Letter (AL) No. 16290 filed July 28, 1992, requested authority to establish Business Advantage Plan, Tariff Schedule Cal P.U.C. No. A6., Message Telecommunications Service. BAP is a toll discount plan that provides business customers, in return for a flat-rate monthly charge, a 50% discount on toll usage. The plan would also allow a customer to combine up to four additional billed business telephone numbers (BTNs) and, for the same monthly charge, to receive the discount on the aggregated toll usage of the five numbers.

On September 15, 1992, Pacific filed Supplement 16290A. The supplement (1) retains Pacific's Optional Discount Plan A (ODP-A), a plan withdrawn by the initial filing; (2) removes the restriction that would prohibit COPT (customer-owned pay telephone) vendors from participating in BAP; (3) proposes that BAP terminate on the effective date of tariffs filed in compliance with Phase III of I.87-11-033, the Commission's investigation into alternative regulatory frameworks for local exchange carriers; and (4) requests a change in the proposed effective date of AL No. 16290 from October 6, to October 7, 1992.

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PROTESTS

Notice of this advice letter was on the Commission Calendar of July 31, 1992. The Commission Advisory and Compliance Division (CACD) has received eight protests to Advice Letter No. 16290 from: MCI; Sprint; Phoenix Communications; CALTEL; Shared Telecommunications Systems, Inc. (STS); Business Telecommunications, Inc. (BTI); California Payphone Association (CPA); and CENTEX Telemangement, Inc. These protests were timely, showed merit, and were therefore considered by CACD. Pacific responded to these protests on August 26, 1992. A summary of the protests and of Pacific's response is presented below.

Toward Utility Rate Normalization (TURN) also protested Pacific's filing. TURN's protest was not timely, however, and was not considered by CACD. Nevertheless, TURN's concerns, which were expressed by the other protestants, are addressed in response to others' protests.

All protestants raised the concern that BAP was similar to Pacific's toll discount plans submitted in the pending IRD phase of I.87-11-033. MCI and CENTEX note that toll discount plans were a major issue litigated in the IRD proceeding, addressed in numerous pages of testimony, and consumed many hours of hearings. The protestants believe that approving one of Pacific's IRD toll discount plans by way of an advice letter would undermine the procedural integrity of the Commission's hearing process. The protestants allege that approval of this plan by way of the advice letter would imply that Pacific could file all of its IRD case by way of advice letters, circumventing the entire formal investigation process.

Pacific responds that it is unreasonable to suggest that it cannot request one rate change, out of the hundreds proposed in the proceeding, while IRD is being decided. Pacific notes that this rate change does not raise any other rate or modify the rate rebalancing proposed in IRD. Pacific states that the protestants are trying to protect themselves from the pending intraLATA exchange competition at the expense of consumers, who would benefit from BAP now.

CPA protests Advice Letter No. 16290 on the grounds that Pacific's plan does not allow COPT providers to participate (since COPT providers are not allowed to combine BTNs), and therefore excludes them from the benefits of the discount.

Responding to CPA's protest, Pacific states that the availability of toll discount plans for COPT providers has been a long standing COPT industry issue. Pacific's Supplement 16290A, filed September 15, 1992, included a modification which makes BAP available to COPT providers, thereby satisfying the concerns of CPA's protest.

BTI and STS opined that Advice Letter No. 16290 discriminates, in violation of P.U. Code Section 453(a), in that it withdraws the high usage toll discount plan that is currently available to

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business and residential customers, ODP-A, and replaces it with BAP, a plan available only to businesses, thus leaving residential customers with no high-usage toll discount options.

Pacific responds that withdrawal of ODP-A would not be discriminatory because there are presently no residential customers to its ODP-A. Nevertheless, Pacific modified the advice letter filing in Supplement 16290A to continue the ODP-A for residential customers.

MCI, Sprint, BTI, Phoenix, and CENTEX all noted that Pacific's contention, in AL No. 16290, that introduction of BAP would increase its revenues is inconsistent with its testimony in the IRD proceeding, where Pacific testified that toll rate decreases will lead to revenue decreases.

In rebuttal, Pacific points out that the advice letter does not assert that toll revenue will increase, as the protestants claim, but rather that Pacific would be better off (by approximately one-half million dollars) by reducing toll rates now and retaining customers, than to do nothing and simply watch its toll business disappear.

DISCUSSION

We believe that the advice letter process is not the appropriate forum to litigate the merits of Pacific's BAP. That litigation has taken place in the Commission's IRD proceeding. We agree that approval of the BAP would, at least in part, circumvent the Commission's formal process. This formal process is effective and fair in that it ensures due process and deliberate consideration of all relevant issues and allows the Commission the opportunity to consider fully how a proposal would affect the overall telecommunications market. These benefits and advantages, while not altogether absent from the advice letter process, are not as crucial to that process, which is designed to expedite issues of little or no controversy in a less formal manner.

The IRD proceeding extensively addressed the issue of toll discount plans in both written and oral testimony. Testimony in IRD has concluded and the proceeding is in the briefing phase. The pending proposed decision I.87-11-033 will address Pacific's proposals for toll discount plans.

Furthermore, approving BAP through the advice letter process may foreclose options currently available to the Commission. We must retain the latitude to base our decisions on the record obtained through hearings. To the extent, however slight, that approval of BAP would preclude or limit our options in IRD, that outcome should be avoided.

Issues raised by the protestants of this advice letter are sufficiently significant to warrant formal consideration. This request and the issues related to it are currently under consideration in I.87-11-033. Therefore, we will reject Advice

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Letter No. 16290 without prejudice pending a decision in I.87-11-033

FINDINGS

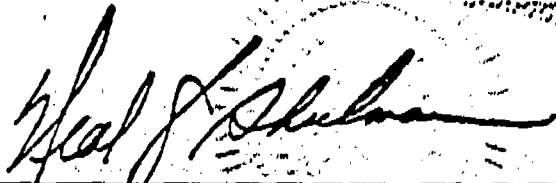
1. On July 28, 1992, Pacific filed Advice Letter No. 16290 requesting approval of its Business Advantage Plan.
2. Pacific filed Supplement 16290A on September 15, 1992.
3. MCI, Sprint, Phoenix Communications, CALTEL, Shared Telecommunications, Inc., Business Telecommunications, Inc., California Payphone Association, and CENTEX Telemanagement, Inc. filed timely and meritorious protests to Advice Letter No. 16290.
4. A toll discount plan similar to the Business Advantage Plan is under consideration in I.87-11-033, the IRD proceeding.
5. The IRD proceeding has been submitted and we are currently considering Pacific's toll discount plans within the context of the IRD testimony.
6. Approving Pacific's Business Advantage Plan by way of the advice letter process tends to undermine the procedural integrity of the Commission's formal investigation process by circumventing I.87-11-033.

THEREFORE, IT IS ORDERED that:

1. Pacific Bell's request to offer Business Advantage Plan, Tariff Schedule Cal. P.U.C. A6, Message Telecommunications Service, requested in Advice Letter No. 16290A, is hereby 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 October 6, 1992. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

I will file a written dissenting opinion.
/s/ PATRICIA M. ECKERT
Commissioner

I will file a written concurring opinion.
/s/ JOHN B. OHANIAN
Commissioner

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

Commissioner Patricia M. Eckert, Dissenting:

The majority opinion in this resolution thwarts the regulatory compact this Commission made with Pacific Bell in D. 89-10-031. Three years ago, in D. 89-10-031, this Commission began the process of allowing Pacific Bell to be more competitive. Today we demand that they be more competitive yet do not allow them to take action to lower rates to business end-users without affecting residential rates.

Pacific Bell, by Advice Letter No. 16290 filed July 28, 1992, requested authority to establish Business Advantage Plan, Tariff Schedule Cal P.U.C. No. A6., Message Telecommunications Service. Business Advantage Plan is a toll discount plan that provides business customers, in return for a flat-rate monthly charge, a 50% discount on toll usage. The plan would also allow a customer to combine up to four additional billed business telephone numbers and, for the same monthly charge, to receive the discount on the aggregated toll usage of the five numbers.

How have we responded to Pacific's petition to lower rates to end-users in order to position itself competitively? This Commission votes out a resolution denying them not only the opportunity to lower rates, but also the opportunity to position the company competitively.

Where is the logic? Where is the vision? Where is the guidance? Why do we issue decisions that produce results directly opposite of the results we have previously directed Pacific Bell to attain? How can we expect reasonable long range business strategic planning when we change the rules in mid-stream?

In attempting to answer these questions, I think the Commission may need to look inward at itself, possibly, through a "systems thinking" approach and using "systems dynamics discipline" as is currently favored by a growing number of progressive corporations. The instant case serves as a vehicle to analyze how and why our policies and decisions interact in complex, unexpected ways.

Pacific and the Commission each has its own system dynamic. Yet, in order to give Californians a telecommunications vision and the wherewithal to realize that vision, the Commission and Pacific should probably be viewed together as one system affecting a larger economic system. The Commission and Pacific must give thoughtful consideration in their respective decisions to:

- 1) the consequences of their decisions on each other's system and as they relate to the whole economic system of California.
- 2) the side effects of those consequences.
- 3) thinking about the whole as well as the parts.
- 4) seeing multiple rather than single causes and effects, and
- 5) detecting interrelationships and recognizing their importance.

This type of systems thinking approach is especially important for the Commission in regulating high technology, innovation-rewarded, competitive corporations because of the speed at which change must occur if such corporations are to maintain any competitive edge.

At first blush, Phase III of the New Regulatory Framework would appear to be the appropriate system to resolve this decision and will most likely lower toll rates. However, Phase III, as a system, is not functioning effectively because it is not linked or integrated with other telecommunications proceedings here at the Commission and will not be operative for at least nine months.

Pacific relies on Commission policies. Because of their size and complexity, Pacific depends on the Commission to be consistent and predictable.

It is incumbent upon this Commission to send consistent signals as to our behavior structure so that we can be understood not only in one setting, basic policy articulation, but also over subsequent decisions to carry out that policy. Seamless regulatory schemes are a cornerstone of responsible Commission regulation. By this resolution the fabric of our basic policy garment unravels at its seams.

Today's decision on Pacific's Advice Letter No. 16290 evidences this disintegration, lack of consistent policy, and lack of understanding of the dynamics within our own system. Therefore, I must respectfully dissent from the majority.

/s/ Patricia M. Eckert

Patricia M. Eckert

Commissioner

October 6, 1992

San Francisco, CA

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Pacific Bell Advice Letter No. 16290,A

Commissioner John B. Ohanian, Concurring

I support this resolution. I support it because it is consistent with the long term perspective of the New Regulatory Framework that we established in D.89-10-031. That is not to say, however, that this was an easy decision. It is difficult to reject a rate decrease, but reject we must. I observe that the advice letter drew considerable opposition in the form of protests, while I saw little in the way of support for Pacific Bell's position. Clearly, in this instance, the long term benefits outweigh the short term gains this advice letter would have on customers. We have worked long and hard while developing a new regulatory framework for the Local Exchange Companies of California. We are close to the end of that journey now --- a journey that began in November 1987 when we opened OII 87-11-033. I remind parties that I was sitting on this Commission when that journey began. I also note, parenthetically, that the opening briefs of Phase III of that investigation were filed just two weeks ago. It would be premature of us now to allow Pacific Bell to effect a significant toll rate restructuring just prior to our Implementation Rate Design decision in Phase III.

By denying Pacific Bell's advice letter, California businesses will be deprived of a significant toll rate decrease. I note that customers that have bills as low as \$250 a month would benefit from this advice letter. Many businesses, including small businesses, fall into this category. It is this aspect to today's resolution that I find troubling. This is a period of time when we need to encourage businesses to remain in the state in order to revive California's economy. Despite this misgiving about today's resolution, I see the specter of our rate design process unraveling. Surely, toll decreases meet our intentions for Phase III, but we cannot risk the regulatory goals that we established in D.89-10-031 such as universal service and rate stability. While we foster the concept of competition in areas of utility service where they are appropriate, we cannot forget that a utility's first obligation is to serve those customers who have no other alternative. I do not want to allow toll rate structures to go into effect tomorrow that will limit the Commission's options when we restructure all of Pacific Bell's rates.

Before closing this subject, I must acknowledge Pacific Bell's efforts to make this advice letter as palatable as possible for our consideration. To wit, they elected to forego any recovery of lost revenues that may have occurred, thus preserving the "revenue neutrality" condition of the

Implementation Rate Design. The initial advice letter withdrew an existing toll discount service which benefitted high usage residential customers. In their supplemental advice letter, they elected to retain this service. I am pleased with Pacific Bell's efforts to work within the regulatory process, and I am encouraged by their efforts to bring the benefits of competition to the marketplace. Unfortunately, it is a bit premature.

Finally, I turn my attention to the the other players waiting for competition in the intraLATA market. What is good for the goose is good for the gander. They, too, must wait. For example, the Interexchange Carriers have considerably more pricing flexibility than Pacific Bell. I will expect them to wait and show the same courtesy as Pacific Bell did in working with the staff of the Commission Advisory and Compliance Division with any future filings that may impact our consideration of the Implementation Rate Design.

/s/ John B. Ohanian
John B. Ohanian

San Francisco, California
October 6, 1992

FESSLER AND SHUMWAY, COMMISSIONERS, CONCURRING:

In our brief tenure on the Commission it has not been a practice to issue formal written opinions in disposing of Advice Letter requests. However, the request by Pacific Bell to establish a "Business Advantage Plan" and modify its existing tariffs has occasioned a vigorous dissent from COMMISSIONER ECKERT the tone and substance of which merit brief comment. COMMISSIONER ECKERT complains that the Commission's refusal to permit this move pending conclusion of the Implementation Rate Design phase of I.87-11-033 is devoid of logic, vision and guidance. More broadly, we are urged to engage in self-examination utilizing what the Commissioner terms "systems thinking" utilizing "systems dynamics discipline." Neither the thought process nor the dynamics are explained, and we confess to having to guess as to their content and direction. However, we do detect a call that the Commission approach decision making from the vantage of long and mid, as well as short-term perspectives. Further, that as members we should engage in our tasks with an awareness that a decision in a specific case may well impact upon, if not foreshadow, others. These are concepts with which we are familiar and to which we whole heartedly subscribe. Yet, they motivate us to vote with the majority in the instant matter.

We trust that we will never find it attractive to vote against a utility bid to lower charges to any class of customers. Surely, we did not find the prospect attractive in the current setting. Yet, the Commission is on the verge of a decision which will encompass a comprehensive approach to many inter-related issues. We anticipate that it will illuminate interaction between and among these issues which are both "complex and unexpected." Notwithstanding, COMMISSIONER ECKERT would have us take one matter out of context and out of turn. Doubtless the Commission and Pacific

function in the context of "one system affecting a larger economic system." However, that relationship is not exclusive and it surely does not exclude the interests and concerns of other participants in the telecommunications infrastructure. The Commission has been consistent in insistence that competitive forces can function in the public interest only if they are allowed to vie on a "level playing field." It is fidelity to that principle, and not the expedient benefit of a short-term adjustment of a rate which will more likely than not have to be reconfigured in less than a year, that occasions our adherence to the majority position.

/s/ Daniel Wm. Fessler

Daniel Wm. Fessler, President

/s/ Norman D. Shumway

Norman D. Shumway, Commissioner

November 4, 1992
San Francisco, California