

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
TELECOMMUNICATIONS DIVISION

RESOLUTION T-15788
OCTOBER 9, 1996

R E S O L U T I O N

RESOLUTION T-15788. PACIFIC BELL. REQUEST TO REVISE
THE EXISTING GUIDELINES FOR CONDUCTING MARKET TRIALS TO
INCLUDE SIGNIFICANT ENHANCEMENTS TO EXISTING SERVICES.

BY ADVICE LETTER NO. 17128 FILED OCTOBER 13, 1994.

SUMMARY

Pacific Bell (Pacific) requests authority under provisions of General Order No. 96-A (G.O. 96-A) to expand the definition of a market trial to include significant enhancements to existing services.

MCI Telecommunications Corporation (MCI) filed a protest to Advice Letter No. 17128 on November 3, 1994 and Pacific filed its response on November 14, 1994. Based on the allegations cited in the protest and Pacific's response, the protest is denied.

This Resolution authorizes Pacific's request. Pacific estimates no change in annual revenue with this filing.

BACKGROUND

The Commission authorized Pacific to deviate from G.O. 96-A to conduct technology tests in Resolution No. T-11083 dated December 3, 1986. In Resolution T-14944, dated June 17, 1992, Pacific was authorized to deviate from G.O. 96-A to conduct market trials at rates, terms, and conditions different from its tariffs by using Commission approved guidelines.

The Commission in Resolution T-14944 limited the use of market trials to new services as defined in D.90-11-029 (AT&T Readyline Decision). In Ordering Paragraph 7 of that Decision, a new

service is defined as "an offering which customers perceive as a new service and which has a combination of technology, access, features, or functions that distinguishes it from any existing services." However, in Findings of Fact No. 11 of Resolution T-14944, it is stated that "The Commission, after it issues its IRD decision, encourages Pacific to make a filing requesting redefinition of market trials, if Pacific believes the Commission's decision affects its ability to fairly compete in the marketplace."

Pacific says that it is highly desirable to market trial enhancements to existing products and services in the marketplace prior to statewide deployment. Pacific filed AL 17128 requesting an expansion of the definition of a market trial to include existing services because it believes that limiting market trials to new services will diminish its ability to compete.

Pacific supplemented AL 17128 on November 17, 1994 to address concerns raised by the Division of Ratepayer Advocates (DRA).

Pacific estimates no change in annual revenue with this filing.

NOTICE

Pacific states that a copy of Advice Letter No. 17128 was mailed to competing and adjacent utilities and/or other utilities and interested parties. The Advice Letter was listed in the Commission's Daily Calendar of October 28, 1994.

PROTESTS

MCI states in its protest of AL 17128 "that such out-of-tariff pricing freedoms are unnecessary, anticompetitive, discriminatory and would institute an unmanageable regulatory scheme which would require extraordinary and impractical diligence to protect consumers from potential abuses of this freedom." MCI's protest is summarized as follows:

- o Pacific has adequate authority today to carry on service testing. Pacific has the authority to test new services and there is no need to test existing services.
- o The Commission should not be in the business of protecting its subject utilities from bad marketing decisions. In a competitive world, firms are not protected from either embarrassment or financial loss from their own marketing errors.
- o Pacific proposed market trial authority would exceed any similar tariff freedoms available to its competitors. If approved, Pacific would be the only telecommunications provider to possess the authority to conduct market trials on existing services.

- o The existing technical and market trial authority provides adequate procedures to meet any reasonable policy goal with limited threat of abuse to consumers and competitors.
- o The expansion of market trials to existing services creates a serious threat of undue discrimination in direct violation of PU Code 453. The Code states that:

No public utility shall, as to rates, charges, services, facilities, or any other respect, make or grant preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

- o Although Pacific will file a market plan with DRA and Commission Advisory and Compliance Division (CACD), they are in no position to determine if the actual selection of customers creates undue discrimination against those customers not selected.
- o Pacific's proposal to expand market trials to include existing services is an anticompetitive threat.

The Local Exchange Carrier (LEC) can extend discriminatory pricing advantages to target customers while charging competitors tariffed rates for the services competitors rely upon to access those same customers.

MCI recommends that the Commission reject AL 17128.

Pacific says that the current definition of market trials affects its ability to fairly compete because under the current Market Trials Guidelines, Pacific, unlike its competitors, such as MCI, may not introduce significant enhancements to existing services.

For Pacific, market trials are currently limited to trialing new services. Summarized below are the reasons Pacific gives as to why a new definition of market trials will permit Pacific to more fairly compete, as well as a brief response to MCI's protest of AL 17128.

- o The current definition of market trials restricts the information available to Pacific prior to introduction of significant enhancements to existing services. If Pacific wants to add new functionality to an existing service and trial it before statewide deployment, Pacific must file a 40 day advice letter and prove that the product offering meets various Commission requirements (e.g., product viability, price to cost relationships, consumer reactions to terms and conditions, and financial thresholds).

On the other hand, other competitors, such as MCI, may introduce product enhancements without such restrictions. For instance, MCI must only wait five days after its filing to introduce product enhancements (D.91-2-013). Furthermore, MCI's filings do not require the same supporting detail as is required of Pacific.

This advance notice allows competitors to use Pacific's ideas and offer a similar service enhancement in the proposed market trial area prior to the introduction of Pacific's trial.

With market trials, Pacific is able to gather information about customer demand, use, etc. Without such trials, Pacific is forced to introduce a significant enhancement to an existing service statewide or not at all. This all or nothing choice increases the risks (and, hence, the cost) of introducing product enhancements.

- o The distinction between new and existing services is not necessary since the safeguards adopted to prevent anticompetitive behavior during market trials address such offerings.

MCI raises concerns about imputation and unbundling. The Commission has addressed imputation and unbundling in Resolution T-14944 and in the Implementation Rate Design (IRD) D.94-09-065. Pacific says it will adhere to the newly adopted IRD imputation and unbundling principles.

DISCUSSION

The Commission has recognized the need for LECs to conduct market trials in response to a competitive environment. However, the Commission has not authorized market trials for product enhancements for existing services.

IRD has opened up traditional LECs' monopoly markets to competition. Pacific says that in order to remain in competitive markets on a fair basis, it should not be unreasonably or unnecessarily restricted in its efforts to introduce significant product enhancements. Pacific therefore, filed AL 17128 requesting Commission authorization to allow market trial of significant enhancements to existing services.

Many of the allegations cited (e.g., imputation, unbundling) in MCI's protest of AL 17128 are similar to its protest of AL 16101 in which Pacific requested authority to deviate from G.O. 96-A to perform market trials. MCI's concerns were discussed in Resolution No. 14944. The protest was denied except for those parts which resulted in changes in the Guidelines for Market Trials ordered in that Resolution.

Pacific's proposed modification to the current Market Trials Guidelines includes significant enhancements to existing services and reflect changes to address the concerns raised by the Division of Ratepayer Advocates. The proposed Guidelines are identical to the existing ones except for the following changes.

- o For each Market Trial Description Package, Pacific Bell will comply with the rules on imputation as outlined in Decision No. 94-09-065 pages 204 through 225 and the associated Findings of Facts, Conclusions of Law and Ordering Paragraphs as set forth in D.94-09-065.
- o Pacific will conduct Market Trials in compliance with Section 453 of the Public Utilities Code and other applicable rules and regulations.
- o Market Trials - The trialing of new or significant enhancements to existing services, feature, 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.

Merely repricing an existing service would not be considered a new service or a significant enhancement. Repackaging of an existing service is allowed as long as the repackaging includes new features and/or functionality that distinguishes the trialed service from an existing service.

MCI also contends that the lack of any public interest goal combined with the significant regulatory effort necessary to protect consumers must lead to the conclusion that the potential costs of the proposal far outweigh any potential benefits.

Market trials allow Pacific to evaluate the marketability of new services and service enhancements on a small scale. By initially restricting the service to a small service base, Pacific limits cost, investment and risk of marketing new services and service enhancements. Therefore, when new services or enhancements to existing services are introduced statewide, customers are more likely to get a competitively priced product that better meets their needs.

The Commission in D.96-03-020 authorized the resale of local exchange service by competitive local carriers (CLCs) within the market territories of Pacific and GTE California effective March 31, 1996. The opening of this traditionally monopoly service market to competition reinforces Pacific's claim that it should not be unreasonably restricted in its efforts to introduce product enhancements to meet competition.

Pacific will be required to adhere to the imputation and unbundling principles adopted by the Commission in conducting market trials for existing services and significant enhancements to existing services.

The Telecommunications Division concludes that AL 17128 as supplemented meets the requirements set forth in the previously mentioned Commission Orders and G.O. 96-A and recommends that the Commission approve this filing. The Telecommunications Division also recommends that MCI's protest of AL 17128 be denied.

FINDINGS

1. Pacific filed Advice Letter No. 17128 as supplemented requesting authority to expand the definition of market trials to include existing services.
2. The Guidelines for Conducting Market Trials (Attachment 1 of Resolution T-14944) as modified by AL 17128 is appropriate for market trials on existing services.
3. The Guidelines for Conducting Market Trials adopted in this Resolution as they apply to new services and significant enhancements to existing services are identical.
4. IRD has set the stage for competition for intraLATA toll and other telephone services.
5. Market trials reduce Pacific's costs and risks of introducing product enhancements.
6. Pacific estimates no change in annual revenue with this filing.

October 9, 1996.

THEREFORE, IT IS ORDERED that:

1. Authority is granted to make Pacific Bell's Advice Letter No. 17128 as supplemented and the corresponding modified Guidelines for Conducting Technology Tests and Market Trials effective October 10, 1996.
2. The protest of MCI Telecommunications Corporation is denied.
3. The Advice Letter as supplemented shall be marked to show that it was authorized by Resolution T-15788.

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 9, 1996. The following Commissioners approved it:


WESLEY M. FRANKLIN
Executive Director

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, Jr.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners