

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TELECOMMUNICATIONS DIVISION
Public Programs Branch

RESOLUTION T-15992
March 18, 1997

R E S O L U T I O N

RESOLUTION T-15992. PACIFIC BELL. (U-1001 C). (PACIFIC) REQUEST TO ADD PRIMARY RATE INTERFACE (PRI) INTEGRATED SERVICES DIGITAL NETWORK (ISDN) SERVICE TO ITS EDUCATION FIRST PROGRAM WHICH WOULD PROVIDE PUBLIC SCHOOLS AND QUALIFYING PRIVATE SCHOOLS (K-12) AND PUBLIC LIBRARIES FREE INSTALLATION AND RATES FOR UP TO ONE YEAR.

BY ADVICE LETTER (AL) NUMBER 18573, FILED ON NOVEMBER 14, 1996 AND SUPPLEMENTED BY ADVICE LETTER NUMBER 18573A, FILED ON DECEMBER 17, 1996 AND ADVICE LETTER NUMBER 18573B FILED ON JANUARY 6, 1997.

SUMMARY

Pacific requests to add PRI ISDN service to its Education First program (Ed First), which has been in operation approximately two years. Public schools (K-12), community colleges, public libraries and eligible private schools would receive free installation of equipment and service rates for up to one year. Pacific states that this service would allow participants to gain network efficiencies and to realize future cost savings through the consolidation of multiple access lines over multichannel digital facilities at mutually agreed upon hub locations. Only participants using hub facilities can apply.

Pacific's request is approved under the following condition. Pacific is not allowed to file for recovery in the California Teleconnect Fund for any of the waived revenues or incurred costs of providing this service.

BACKGROUND

In resolutions T-15588, modified by Decision (D.) 94-11-077, and T-15703 the Commission authorized Pacific to offer schools and libraries and private schools, respectively, its proposed Education First program. Installation charges and all recurring rates are waived for one year for specified services to provide participants baseline proficiency to access information and engage in interactive distance learning. On February 7, 1996, in T-15837, Pacific's request was granted to establish a provisional two-year tariff to offer a discount rate to Ed First participants who had completed the one year waiver of rates and charges. In T-15960, adopted September 4, 1996, Pacific's request to extend its Education First program for an additional year, until December 31, 1997, was authorized.

In this AL Pacific specifically requests authority to waive rates and charges associated with:

- o PRI ISDN feature packages 1 and 2
- o Usage charges associated with local, Zone 1, 2, and IntraLATA Toll (Local Plus)
- o Transport service (DS-1) provided from Cal PUC 175-T when used for PRI ISDN
- o Dial Plan
- o Measured rate trunks

With one exception, Pacific's AL states its intention that Commission resolutions and decisions on Pacific's Education First program, cited above, would govern this expanded waiver of charges for distance learning under the Program. The exception is that Pacific will not offer the Ed First participants using the PRI ISDN service the discount rate Pacific established for Ed First participants beginning year two. Pacific believes that, to the extent that participants using PRI ISDN service are eligible and funds are available, they should file for discount rates in the California Teleconnect Fund established in the Universal Service (US) decision, D. 96-10-066.

In that decision (D. 96-10-066) the Commission adopted a program of discounts for qualifying schools and libraries in Rule 8 of Appendix B of that decision. The discount rate is set at 50% for all 1 MBs, switched 56, ISDN, T-1, and DS 3 services, or their functional equivalents. On November 26, 1996, in D. 96-11-050, the Commission clarified its intent on how the discount would work should a school or library negotiate a lower rate than the tariffed rate. In this case the percentage discount off of the negotiated rate would apply.

NOTICE/PROTESTS

Pacific's AL 15873 was listed in the Commission's daily calendar on November 16, 1996 and AL 15873A was listed in the calendar on December 20, 1996. AL 15873B, filed on January 6, 1997, was listed in the calendar on January 8, 1997.

On December 4, 1996, a timely filed protest was filed by Davis Wright Tremain, LLP, on behalf of Teleport Communications Group, ICG Telecom Group, Inc., the California Cable Television Association, MCI Telecommunications Corp. and TCI Telephony Services of California, Inc. (Protestants). Protestants raised the concern that there are anti-competitive aspects with this filing as well as its lack of compliance with provisions of The Act and of our Universal Service decisions.

- (1) Protestants argue that approval of this AL would directly violate D. 96-10-066, which mandates that tariffed discounts for schools and libraries be set at 50% of the business rates for the service. Additionally, the AL violates D. 96-10-066 by waiving installation and usage charges, which are not included in the decision as being subject to the approved discount.

- (2) Further, protestants state that approval of the AL would violate the competitive neutrality provisions of Section 254 of The Act, thereby setting up a situation where the Commission's action would be subject to being overturned by a federal district court.
- (3) Third, Pacific has not provided any cost justification for its assertion that its waiver under the AL will have an impact of \$3.7 million, nor has it identified what portion, if any, of this \$3.7 million it will seek to recover from the Teleconnect Fund.
- (4) Last, approval of the AL would represent an abdication of the Commission's crucial role as referee of the competitive market at this significant juncture and would send the wrong signal to competitors hoping to serve California customers.

If the AL is approved, protestants ask the Commission to direct Pacific to make available its PRI ISDN services, with the full waiver of all charges, to its resellers for resale to schools and libraries.

Pacific's Response to the Protest

Pacific's response, dated December 11, 1996, disagrees with most of the points raised in the protest. First it argues that the protestants have incorrectly characterized the Commission's D. 96-10-066 as "mandating" the setting of tariffed services for schools and libraries at 50% off the tariffed rate; in fact, the Commission, they state, actually encourages carriers to negotiate rates lower than a 50% discount with qualifying schools and libraries and only establishes the discount rate at 50% as the tariffed rate that must be available.

The response then quotes D. 96-10-066, p. 89, in its description of the information superhighway, and the role of the Commission's directions. Pacific quotes this section and underlines language in the last sentence: "In our capacity, we can provide the onramp to this highway at a discount. However, to make this highway accessible to all, and to ensure the success of this discount program, the telecommunications industry, computer and software manufacturers, and the information providers, must all take the lead and provide schools, libraries, hospitals, clinics, and CBOs, with the necessary equipment and services at no cost or at substantially reduced prices".

Regarding cost justification, Pacific states that cost support has been provided to the Telecommunications Division under separate cover from the Advice Letter and also that Pacific never intended the AL to be part of the filing for Universal Service discounts and, therefore, no recovery is expected.

Addressing protestants' belief that approval of the AL would violate competitive neutrality provisions of The Act, Pacific states that the Ed First program is clearly consistent w/Commission and FCC intent, as the program is purely

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discretionary, and that the state is given the authority under The Act to "adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden federal universal service support mechanisms". Additionally, Pacific goes on to state, schools and libraries do not have to subscribe to Pacific's services and may obtain solutions from other providers. Also, regarding the fact that Pacific can absorb with its financial capability the waived revenues and are only doing so to lock customers into long-term contracts when the program period expires, Pacific points out that the Ed First program provides only 12 months free service and allows the customer to opt out at any time.

Concerning the Commission's role as referee, Pacific believes the US decision is an illustration of the Commission's commitment to "hit the ground running" and also has the opportunity to review its decision once the FCC resolves any unanswered questions, although pointing out that the FCC has extended State authority to provide for additional definitions and standards that preserve and advance universal service. The Commission would have delayed approval of the extension of the Education First program, if it perceived the program to be in violation or conflict with the upcoming discounts as the universal service decision proceeding was underway when the extension was approved.

Last, Pacific states that resellers can now purchase these services from Pacific Bell at a discount, through interconnection agreements and/or the arbitration process. Once they have purchased these services from Pacific Bell they are welcome to set rates to their own individual competitive advantage. Additionally, Pacific states that the Protestants are fully capable of creating and executing their own programs without undue financial hardship.

DISCUSSION

We believe that Pacific should be allowed to add its PRI ISDN service to its Ed First program, as requested. We believe that our decisions allow the Ed First program to coexist along with the tariffing requirements required under the US decisions. We will not require Pacific to make available for resale its Primary Rate ISDN service at the same rate as it is offered to schools and libraries under the Ed First program (i.e. for free).

To address protestants' concerns, we believe that one and three of their concerns have already been satisfactorily addressed. Regarding recovery of Pacific's Ed First program in the Teleconnect Fund, Pacific has stated, and we will require as a condition of granting Pacific's request, that Pacific will never file in the California Teleconnect Fund for recovery of Pacific's waived revenues and incurred costs associated with any of its Ed First offerings, including the PRI ISDN service. Regarding protestants' concern number three, regarding the lack of financial data from Pacific on which to evaluate its request, this also has, we believe, been addressed. Pacific provided its

financial estimates associated with offering this service which are available to parties under disclosure agreements.

Regarding protestants second concern, we do not believe that approval of this AL violates the "competitively neutrality" provisions of Section 254. We note that Pacific is prohibited from seeking recovery of any waived costs from the California Teleconnect Fund. Any provider could offer similar waivers to its educational customers should they so desire. This program, Education First, is separate from the Commission's Universal Service policy, yet it is a complement.

Finally, to respond to protestants' fourth concern, regarding the Commission's role as referee of the competitive market, the Commission has not in any way abdicated its crucial role. This resolution does not grant Pacific any authority or privilege that we have denied others. Any provider seeking to offer similar plans may seek similar Commission approval if required. Nothing in this resolution prevents similar activities, whether they are considered marketing or philanthropy, by other telecommunications providers. We have assured that Pacific cannot use the Teleconnect fund to support the Education First program. We are not allowing Pacific to raise rates from other services to off set the waived revenues. We have made available a competitively neutral Teleconnect program. Clearly the Commission continues to "referee" the competitive market place.

We believe that competitive local carriers (CLCs) that have established interconnection agreements with Pacific should be able to obtain at a discount rate Pacific's PRI ISDN service and establish their own programs, as stated by Pacific in its response to protestants. As Pacific's current tariffed resale rates for PRI ISDN service are not discounted but are offered at its retail rate, CLCs who are not establishing interconnection agreements with Pacific will not have access to discounted resale rates at this time.

FINDINGS

1. In T-15588, modified by D. 94-11-077, Pacific was authorized to offer its Education First program consisting of baseline BRI ISDN service to schools and libraries with free installation charges and rates for one year.
2. In T-15960, Pacific's request to extend its Education First program until December 31, 1997, was granted.
3. Pacific has requested in AL 18573 to add PRI ISDN service to its Ed First program so that qualifying schools and libraries using hub facilities could be provided PRI ISDN service under the same terms and conditions of its current Education First Program.
4. A protest filed by Davis Wright Tremaine, LLP on behalf of TCG, ICG, CCTA, MCI and TCI, argues that Pacific's AL is an anticompetitive effort to lock up the (schools and libraries) market for itself, to the detriment of all other carriers who

wish to compete for the provision of these services to the state's schools and libraries.

5. Protestants request the Commission to reject Pacific's AL and require Pacific to file tariffs which offer the non-recurring charges and recurring rates for PRI ISDN services for schools and libraries at the 50% discount rate required by the Commission's universal service decisions and The Act or, if the Commission approves Pacific's AL, to require Pacific to provide PRI ISDN service to resellers at the same free rates and charges offered to schools and libraries.
6. Pacific's request to include PRI ISDN service in its Ed First program whereby free recurring rates and non-recurring charges for one year would be provided to qualifying schools and libraries should be approved.
7. The protest filed by Davis Wright Tremain, LLP on behalf of TCG, ICJ, the CCTA, MCI and TCI should be denied.
8. Pacific has interconnection agreements with most of the protestants who should be able to obtain ISDN PRI service at discount resale rates.
9. Pacific's tariffed PRI ISDN service for resale is offered at Pacific's retail rate.
10. Pacific should not be allowed to file for recovery of its Ed First waived rates, charges and revenues in the Teleconnect Fund.

THEREFORE, IT IS ORDERED that:

1. Pacific Bell (Pacific) is authorized to add PRI ISDN service to its Education First Program as requested in its Advice Letter No. 18573.
2. Pacific cannot file in the California Teleconnect Fund for compensation for the waived revenues or incurred costs associated with providing PRI ISDN service in its Education First program.

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3. The protest filed by Davis Wright Tremaine, LLP on behalf of Teleport Communications Group, ICG Telecom Group, Inc., the California Cable Television Association, MCI Telecommunications Corporation and TCI Telephony Services of California, Inc. is rejected.

This resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 18, 1997. The following Commissioners approved it:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director

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President
JESSIE J. KNIGHT, Jr.
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